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Report of the United Nations Commission on International Trade Law

Forty-ninth session
(27 June-15 July 2016)

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I. Introduction

1. The present report of the United Nations Commission on International Trade Law (UNCITRAL) covers the forty-ninth session of the Commission, held in New York from 27 June to 15 July 2016.

2. Pursuant to General Assembly resolution 2205 (XXI) of 17 December 1966, this report is submitted to the Assembly and is also submitted for comments to the United Nations Conference on Trade and Development.

II. Organization of the session

A. Opening of the session

3. The forty-ninth session of the Commission was opened by the Under-Secretary-General for Legal Affairs and Legal Counsel of the United Nations, Mr. Serpa Soares, on 27 June 2016.

B. Membership and attendance

4. The General Assembly, in its resolution 2205 (XXI), established the Commission with a membership of 29 States, elected by the Assembly. By its resolution 3108 (XXVIII) of 12 December 1973, the Assembly increased the membership of the Commission from 29 to 36 States. By its resolution 57/20 of 19 November 2002, the General Assembly further increased the membership of the Commission from 36 States to 60 States. The current members of the Commission, elected on 14 November 2012, 14 December 2012, 9 November 2015, 15 April 2016 and 17 June 2016 are the following States, whose term of office expires on the last day prior to the beginning of the annual session of the Commission in the year indicated:[1] Argentina (2022), Armenia (2019), Australia (2022), Austria (2022), Belarus (2022), Brazil (2022), Bulgaria (2019), Burundi (2022), Cameroon (2019), Canada (2019), Chile (2022), China (2019), Colombia (2022), Côte d'Ivoire (2019), Czech Republic (2022), Denmark (2019), Ecuador (2019), El Salvador (2019), France (2019), Germany (2019), Greece (2019), Honduras (2019), Hungary (2019), India (2022), Indonesia (2019), Iran (Islamic Republic of) (2022), Israel (2022), Italy (2022), Japan (2019), Kenya (2022), Kuwait (2019), Lebanon (2022), Lesotho (2022), Liberia (2019), Libya (2022), Malaysia (2019), Mauritania (2019), Mauritius (2022), Mexico (2019), Namibia (2019), Nigeria (2022), Pakistan (2022),

[1] Pursuant to General Assembly resolution 2205 (XXI), the members of the Commission are elected for a term of six years. Of the current membership, 29 were elected by the Assembly at its sixty-seventh session, on 14 November 2012, one was elected by the Assembly at its sixty-seventh session, on 14 December 2012, 23 were elected by the Assembly at its seventieth session, on 9 November 2015, five were elected by the Assembly at its seventieth session, on 15 April 2016, and two were elected by the Assembly at its seventieth session, on 17 June 2016. By its resolution 31/99, the Assembly altered the dates of commencement and termination of membership by deciding that members would take office at the beginning of the first day of the regular annual session of the Commission immediately following their election and that their terms of office would expire on the last day prior to the opening of the seventh regular annual session following their election.

Panama (2019), Philippines (2022), Poland (2022), Republic of Korea (2019), Romania (2022), Russian Federation (2019), Sierra Leone (2019), Singapore (2019), Spain (2022), Sri Lanka (2022), Switzerland (2019), Thailand (2022), Turkey (2022), Uganda (2022), United Kingdom of Great Britain and Northern Ireland (2019), United States of America (2022), Venezuela (Bolivarian Republic of) (2022) and Zambia (2019).

5. With the exception of Burundi, Colombia, Côte d'Ivoire, Iran (Islamic Republic of), Kenya, Kuwait, Lebanon, Liberia, Malaysia, Mauritania, Pakistan, the Philippines and Poland, all the members of the Commission were represented at the session.

6. The session was attended by observers from the following States: Algeria, Cyprus, Dominican Republic, Finland, Iraq, Netherlands, Peru and Swaziland.

7. The session was also attended by observers from the Holy See and the European Union.

8. The session was also attended by observers from the following international organizations:

(a) *United Nations system*: European Center for Peace and Development (ECPD), International Centre for Settlement of Investment Disputes (ICSID), United Nations Environmental Programme (UNEP) and World Bank;

(b) *Intergovernmental organizations*: the Hague Conference on Private International Law, International Development Law Organization (IDLO), International Institute for the Unification of Private Law (Unidroit), Maritime Organization of West and Central Africa (MOWCA) and Organization for Economic Cooperation and Development (OECD);

(c) *Invited non-governmental organizations*: American Arbitration Association/International Centre for Dispute Resolution (AAA/ICDR), American Bar Association (ABA), American Society of International Law (ASIL), Asia-Pacific Regional Arbitration Group (APRAG), Association Suisse de l'Arbitrage (ASA), Center for International Dispute Settlement (CIDS), China Society of Private International Law (CSPIL), Commercial Finance Association (CFA), European Law Students' Association (ELSA), Factors Chain International and the EU Federation for Factoring and Commercial Finance (FCI+EUF), Forum for International Conciliation and Arbitration (FICACIC), Grupo Latinoamericano de Abogados para el Derecho del Comercio Inernational (GLULACI), Institute of Commercial Law/Penn State Dickinson School of Law, Inter-American Commercial Arbitration Commission (IACAC), Inter-Pacific Bar Association (IPBA), International Bar Association (IBA), International Chamber of Commerce (ICC), International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (ICAC), International Council for Commercial Arbitration (ICCA), International Institute for Conflict Prevention and Resolution (CPR), International Road Transport Union (IRU), International Women's Insolvency and Restructuring Confideration (IWIRC), Jerusalem Arbitration Center (JAC), London Court of International Arbitration (LCIA), Moot Alumni Association (MAA), National Law Center for Inter-American Free Trade (NLCIFT), New York State Bar Association (NYSBA), Pace Institute of International Commercial Law (PIICL), Regional Centre for International Commercial Arbitration (Lagos, Nigeria) (RCICAL),

Universitat de Les Illes Balears (CEDIB), World Association of Former United Nations Interns and Fellows (WAFUNIF) and Wuhan University Institute of International Law (WHU).

9. The Commission welcomed the participation of international non-governmental organizations with expertise in the major items on the agenda. Their participation was crucial for the quality of texts formulated by the Commission and the Commission requested the Secretariat to continue to invite such organizations to its sessions.

C. Election of officers

10. The Commission elected the following officers:

Chair:	Mr. Gaston KENFACK DOUAJNI (Cameroon)
Vice-Chairs:	Mr. Rodrigo LABARDINI FLORES (Mexico) Mr. David MŮLLER (Czech Republic) Mr. Michael SCHNEIDER (Switzerland)
Rapporteur:	Mr. Jeffrey CHAN (Singapore)

D. Agenda

11. The agenda of the session, as adopted by the Commission at its 1024th meeting, on 27 June, was as follows:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of issues in the area of security interests:
   (a) Finalization and adoption of a draft Model Law on Secured Transactions;
   (b) Consideration of the draft Guide to Enactment of the draft Model Law on Secured Transactions;
   (c) Possible future work in the area of security interests;
   (d) Coordination and cooperation.
5. Consideration of issues in the area of arbitration and conciliation:
   (a) Finalization and adoption of the revised UNCITRAL Notes on Organizing Arbitral Proceedings;
   (b) Progress report of Working Group II;
   (c) Establishment and functioning of the transparency repository;
   (d) Possible future work in the area of arbitration and conciliation;
   (e) Secretariat Guide on the New York Convention;

(f) International commercial arbitration and mediation moot competitions.

6. Consideration of issues in the area of online dispute resolution: finalization and adoption of Technical Notes on Online Dispute Resolution.

7. Micro-, small- and medium-sized enterprises: progress report of Working Group I.

8. Consideration of issues in the area of electronic commerce:

(a) Progress report of Working Group IV;

(b) Future work in the area of electronic commerce;

(c) Cooperation with UN/ESCAP in the field of paperless trade.

9. Insolvency law: progress report of Working Group V.

10. Technical assistance to law reform:

(a) General;

(b) Consideration of a draft guidance note on strengthening United Nations support to States, upon their request, to implement sound commercial law reforms.

11. Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts:

(a) Case Law on UNCITRAL texts (CLOUT);

(b) Digests of case law relating to UNCITRAL legal texts.

12. Status and promotion of UNCITRAL legal texts.

13. Coordination and cooperation:

(a) General;

(b) Reports of other international organizations;

(c) International governmental and non-governmental organizations invited to sessions of UNCITRAL and its Working Groups.

14. UNCITRAL regional presence.

15. Role of UNCITRAL in promoting the rule of law at the national and international levels.

16. Work programme of the Commission.

17. Congress 2017.

18. Relevant General Assembly resolutions.

19. Other business.

20. Date and place of future meetings.

21. Adoption of the report of the Commission.

E. Adoption of the report

12. The Commission adopted the present report by consensus at its 1033rd meeting, on 1 July, at its 1039th meeting, on 8 July, and at its 1046th meeting, on 15 July 2016.

III. Consideration of issues in the area of security interests

A. Finalization and adoption of a draft Model Law on Secured Transactions

1. Introduction

13. The Commission recalled that, at its forty-sixth session, in 2013,[2] it had confirmed its decision taken at its forty-fifth session in 2012, that Working Group VI (Security Interests) should prepare a model law on secured transactions (the "draft Model Law") based on the recommendations of the *UNCITRAL Legislative Guide on Secured Transactions* (the "Secured Transactions Guide")[3] and consistent with all texts prepared by the Commission on secured transactions, including the *United Nations Convention on the Assignment of Receivables in International Trade* (New York, 2001) (the "Assignment Convention"),[4] the *Supplement on Security Rights in Intellectual Property* (the "Intellectual Property Supplement"),[5] and the *UNCITRAL Guide on the Implementation of a Security Rights Registry* (the "Registry Guide").[6]

14. In addition, the Commission recalled that, at its forty-seventh session, in 2014, it had acknowledged the importance of modern secured transactions law for the availability and cost of credit and the need for urgent guidance to States, in particular those with developing economies and economies in transition, and had requested the Working Group to expedite its work so as to complete the draft Model Law, including the definitions and provisions on non-intermediated securities, and to submit it to the Commission for adoption as soon as possible.[7]

15. Moreover, the Commission recalled that, at its forty-eighth session in 2015, it had approved the substance of article 26 of chapter IV of the draft Model Law and articles 1 to 29 of the draft Registry Act (see A/CN.9/852), and had requested the Working Group to expedite its work so as to submit the draft Model Law to the Commission for final consideration and adoption at its forty-ninth session in 2016.[8]

16. At its current session, the Commission had before it the reports of the twenty-eighth and twenty-ninth sessions of the Working Group (A/CN.9/865 and

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[2] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 194 and 332.

[3] United Nations publication, Sales No. E.09.V.12.

[4] General Assembly resolution 56/81, annex. Also available as United Nations publication, Sales No. E.04.V.14.

[5] United Nations publication, Sales No. E.11.V.6.

[6] United Nations publication, Sales No. E.14.V.6.

[7] *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 163.

[8] Ibid., *Seventieth Session, Supplement No. 17* (A/70/17), paras. 214 and 216.

A/CN.9/871, respectively), as well as notes by the Secretariat entitled "Draft Model Law on Secured Transactions" (A/CN.9/884 and addenda 1-4, including the "draft Model Registry-related Provisions" contained in A/CN.9/884/Add.1), "Draft Guide to Enactment of the draft Model Law on Secured Transactions" (A/CN.9/885 and addenda 1-4) and "Draft Model Law on Secured Transactions: Compilation of comments by States" (A/CN.9/886, A/CN.9/887 and A/CN.9/887/Add.1). In addition, the Commission noted with appreciation that, at its twenty-eighth and twenty-ninth sessions, the Working Group adopted the draft Model Law (A/CN.9/865 and A/CN.9/871) and, at its twenty-ninth session, decided to submit it to the Commission for consideration and adoption at its forty-ninth session (A/CN.9/871, para. 91).

2. Consideration of the draft Model Law (A/CN.9/884 and Addenda 1-4)

Chapter I. Scope of application and general provisions

17. With respect to article 1, it was agreed that paragraph 2 should be revised to: (a) refer to articles 70-80 (see para. 80 below); (b) include the words "by agreement" after the word "receivables" to clarify that the draft Model Law only applied to outright transfers of receivables by agreement and not by law; and (c) delete the text in square brackets, since it referred to terminological issues that were left to article 2. It was also agreed that paragraph 4 should be retained outside square brackets.

18. With respect to article 2, it was agreed that: (a) in the definition of the term "bank account", reference should be made only to "authorized deposit-taking institution"; (b) in the definition of the term "competing claimant", the square bracketed words "[to be specified by the enacting State]" should be deleted, while the draft Guide to Enactment of the draft Model Law (the "draft Guide to Enactment") should give examples of other creditors of the grantor that could have a right in the same encumbered asset; (c) in the definition of the term "debtor of the receivable", the reference to a "transferor in an outright transfer" should be deleted; (d) in the definition of the term "default", the text that appeared within square brackets should be revised to read along the following lines: "and any other event that under the terms of an agreement between the grantor and the secured creditor constitutes default" and be retained outside square brackets; (e) at the end of the definition of the term "encumbered asset", the words "by agreement" should be added in line with the Commission's decision on article 1, paragraph 2 (see para. 17 above) and the text should be retained outside square brackets; (f) in subparagraph (ii) of the definition of the term "grantor", the words "lessee or licensee" should be deleted, and in subparagraph (iii) the word "in" should be replaced with the word "under" and the words "by agreement" should be included at the end (same changes should be made to the definitions of the terms "secured creditor" and "security right"); (g) the definition of the term "insolvency representative" should be deleted, since the term only appeared in the definition of the term "competing claimant", and that term together with other relevant insolvency terms could be briefly explained in the draft Guide to Enactment; (h) in the definition of the term "inventory", reference should be made to "raw materials and work-in-process", and not to "semi-processed materials"; (i) the term "movable asset" should be defined along the following lines: "'movable asset' means a tangible or intangible asset other than immovable property [as defined in the law of

the enacting State]"; (j) in the definition of the term "possession", the words "directly or indirectly" should be deleted as they were redundant; (k) the term "registry" should be defined along the following lines: "'registry' means the registry established under article 27 of this Law"; (l) in the definition of the term "secured obligation", the second sentence should be deleted and the draft Guide to Enactment should explain that there was no secured obligation in an outright transfer of a receivable; (m) the bracketed text in the definitions of the term "security agreement" and "security right" should be retained outside square brackets; (n) in the definition of the term "tangible asset", reference should be made to subparagraph (l) instead of subparagraph (k) and, in addition, to article 31; and (o) the term "writing" should be defined along the lines of recommendation 11 of the Secured Transactions Guide.

19. After discussion, the Commission adopted articles 1 and 2 subject to the above-mentioned changes and articles 3-5 unchanged (for subsequent changes made to art. 3, see paras. 96-98, and for subsequent changes made to art. 2, subpara. (t), see para. 100 below).

Chapter II. Creation of a security right

20. With respect to the heading of section "A. General rules" of chapter II, it was agreed that, to address the relationship between the general and the asset-specific provisions in each chapter, a footnote should be added at the beginning of chapter II that would read along the following lines: "In this chapter and all other chapters, the general rules are subject to the asset-specific rules. The enacting State may wish to include in its law a provision reflecting this principle or otherwise address the relationship between general and asset-specific provisions".

21. With respect to article 6, it was agreed that, to better reflect its content, its heading should be changed to read along the following lines: "Creation of a security right and requirements for a security agreement". (For an additional amendment made to art. 6, see para. 24 below).

22. With respect to article 7, it was agreed that it should be revised to read along the following lines: "A security right may secure one or more obligations of any type, ...".

23. With respect to article 8, subparagraph (a), it was agreed that the reference to future assets should be deleted as article 6, paragraph 2, already provided that a security agreement might provide for the creation of a security right in a future asset, but the security right was created only when the grantor acquired rights in that future asset or the power to encumber it.

24. With respect to article 9, it was agreed that it should be revised to apply the same standard to the description of secured obligations, and thus to: (a) refer to secured obligations in the heading and in paragraph 1; and (b) include a third paragraph that would read along the following lines: "A description of secured obligations that indicates that the security right secures all obligations owed to the secured creditor at any time satisfies the standard in paragraph 1". In addition, it was agreed that it was sufficient to refer in paragraph 1 to encumbered assets, rather than "assets encumbered or to be encumbered". Moreover, it was agreed that in article 6, paragraph 3(b), a reference should be included to the description of a secured obligation "as provided in article 9".

25. With respect to article 10, it was agreed that reference should be made to "money or funds", rather than to "assets" or "proceeds", and to the "amount", rather than to the "value", of money or funds. While the Commission initially agreed to also cover in article 10 money or funds as original encumbered assets, and not just as proceeds, it ultimately decided not to do it because: (a) commingling of money or funds as an original encumbered asset was rare in practice; (b) if the matter was addressed in article 10, it would also have to be addressed in the chapter on third-party effectiveness and priority; and (c) the matter could be addressed in the draft Guide to Enactment (by explaining, for example, that the term "proceeds" as defined in art. 2, subpara. (bb), covered situations where funds in a bank account were moved to another bank account, even at the instigation of the deposit-taking institution, and thus art. 10, para. 2, applied to those situations, as the funds in the second bank account were "proceeds").

26. With respect to article 11, it was agreed that paragraph [3][4] should be deleted as the matter was better addressed in article 32, paragraphs 2 and 3. While support was expressed in favour of option A and option B, the concern was also expressed that they were difficult to administer as they presupposed an evaluation of tangible assets before commingling which was said to be rare in practice. In order to address that concern, a third option was proposed. After discussion, the Commission postponed consideration of article 11 until it had a proposal possibly combining the elements of all options into one rule (see para. 99 below).

27. With respect to article 12, it was agreed that it should be revised to provide that a security right would be extinguished when all secured obligations had been discharged and there were no outstanding commitments to extend credit secured by the security right.

28. With respect to article 13, it was agreed that: (a) for reasons of consistency with article 9 of the Assignment Convention and because they were unnecessary, the words "as between the grantor and the secured creditor and as against the debtor of the receivable" in paragraph 1 should be deleted; (b) as the meaning of the term "subsequent" was not clear (because, unlike the Assignment Convention which defined the term "subsequent assignment" in art. 2, subpara. (b), the draft Model Law did not contain a definition of the term "subsequent security right") and on the understanding that the meaning of paragraph 1 would not change, reference should be made to "any" secured creditor rather than to any "subsequent" secured creditor; and (c) also for reasons of consistency with article 9 of the Assignment Convention and to avoid giving the impression that paragraph 3 limited the protection provided to secured creditors with the last part of paragraph 2, paragraph 3 should be merged into paragraph 2.

29. With respect to article 14, it was agreed that: (a) for reasons of consistency with article 10 of the Assignment Convention, paragraph 2 should be merged into paragraph 1; (b) for the same reason but also to avoid giving the impression that the draft Model Law dealt with the question of whether a right securing or supporting an encumbered receivable should be transferred with or without a new act of transfer, the words "under the law governing it" should be added in paragraph 2 to qualify the word "transferable".

30. After discussion, the Commission adopted articles 6 to 14 subject to the changes mentioned above (for changes made to art. 11 see also para. 99 below) and articles 15 to 17 unchanged.

Chapter III. Effectiveness of a security right against third parties

31. With respect to article 18, further to its decision to include in article 2 a definition of the term "registry" (see para. 18, subpara. (k) above), the Commission agreed that article 18 should be revised to refer to the "Registry", rather than to the "general security rights registry". It was also agreed that the footnote to article 18, paragraph 1, should be moved to the definition of the term "registry" and clarify that, if the enacting State implemented the UNCITRAL Model Law on Secured Transactions and the Model Registry-related Provisions contained therein in one law, it would need to include a definition of the term "registry" only once, rather than twice, as was currently the case in the draft Model Law and the draft Model Registry-related Provisions because of the assumption that they might be implemented in separate statutes or other types of instrument.

32. With respect to article 19, it was agreed that reference should be made in both paragraphs 1 and 2 to a security right in proceeds arising under article 10, so as to cover the point that the security right extended only to "identifiable" proceeds. As a result, it was agreed, the reference to the identifiability of the proceeds in paragraph 2 would be redundant and should thus be deleted.

33. The Commission noted that, while the draft Model Law dealt in article 11 with the creation of a security right in tangible assets commingled in a mass or product and in article 40 with the priority of such a security right, there was no article in the draft Model Law dealing with the third-party effectiveness of such a security right. Thus, the Commission agreed that a new article should be inserted in this part of the draft Model Law to implement recommendation 44 of the Secured Transactions Guide that should read along the following lines: "If a security right in a tangible asset is effective against third parties, a security right in a mass or product to which the security right extends under article 11 is effective against third parties without any further act".

34. With respect to article 22, it was agreed that the reference to a change of the applicable law as a result of a change in the location of the asset or the grantor should be deleted, since under chapter VIII of the draft Model Law the applicable law could change as a result, for example, of a change in the location of the depositary institution maintaining the relevant account. For that reason but also for reasons of clarity, it was agreed that paragraph 1 should be revised to read along the following lines: "If a security right is effective against third parties under the law of another State and this Law becomes applicable, the security right remains effective against third parties under this Law if it is made effective against third parties in accordance with this Law before the earlier of: (a) ...; and (b) The expiry of [a short period of time to be specified by the enacting State] after this Law becomes applicable".

35. With respect to article 23, it was agreed that option A should be deleted and option B should be revised to read along the following lines: "An acquisition security right in consumer goods with an acquisition price below [an amount to be specified by the enacting State] is effective against third parties other than a buyer,

lessee or licensee upon its creation without any further act" (see para. 102 below for subsequent changes to the agreed text). It was also agreed that, for that rule to make sense, the draft Guide to Enactment should clarify that States should specify a reasonably high price. It was also agreed that there was no need to refer to a transferee other than a buyer, as the term "transferee" could cover a donee to whom article 23 should not apply.

36. The concern was, however, expressed that qualifying the third-party effectiveness of a security right by a reference to certain third parties was in essence a priority rule providing that buyers acquired consumer goods free of acquisition security rights made effective against third parties under article 23. It was also stated that introducing a relative concept of third-party effectiveness would be inconsistent with the approach taken in the draft Model Law which referred to effectiveness against all third parties (without regard to who the third party was) and distinguished third-party effectiveness from priority. After discussion, the Commission postponed consideration of article 23 until it had the opportunity to consider a proposal with respect to a priority rule that would address that concern (see paras. 102-104 below).

37. With respect to article 25, it was agreed that paragraph 3 should be revised to also refer to the return of "the assets covered by the document", not only to "dealing with the assets", while the draft Guide to Enactment should explain that the words "dealing with the assets" covered not only transactions like sale and exchange but also physical actions like loading and unloading.

38. After discussion, the Commission adopted articles 18, 19, 22, 23 and 25 subject to the above-mentioned changes (for art. 23, see also paras. 102-104 below) and articles 20, 21, 24 and 26 unchanged. The Commission also adopted the new article on the third-party effectiveness of a security right in tangible assets commingled in a mass or product that would follow article 19 (see para. 33 above).

Chapter IV. The registry system

39. With respect to article 27, it was agreed that its heading should be revised to read along the following lines: "Establishment of the Registry". Subject to that change, the Commission adopted article 27.

Draft Model Registry-related Provisions

40. The Commission agreed that the draft Model Registry-related Provisions should be called "Model Registry Provisions".

41. With respect to article 1 of the draft Model Registry-related Provisions, it was agreed that the definition of the term "registered notice" and the numbers of all subsequent paragraphs should be retained outside square brackets.

42. With respect to article 5 of the draft Model Registry-related Provisions, it was agreed that reference should be made in paragraph 4 to access "to registry services". It was also agreed that the draft Guide to Enactment should explain that, with respect to initial notices, a registrant would normally meet any secured access requirements in the context of identifying itself (which could include setting up a user account; see the Registry Guide, para. 96), as provided in paragraph 1(b).

43. With respect to article 6 of the draft Model Registry-related Provisions, it was agreed that, for reasons of clarity and avoiding that the Registry would be obliged to accept a notice or a search request if some but not all information was legible, paragraphs 1(a) and 2 should be revised to read along the following lines respectively: "A notice if no information is entered in one of the mandatory designated fields or information entered in one of the mandatory designated fields is illegible" and "The Registry must reject a search request if no information is entered in one of the fields designated for entering a search criterion or information entered in one of the fields designated for entering a search criterion is illegible".

44. With respect to article 8 of the draft Model Registry-related Provisions, it was agreed that the reference to article 9 of the draft Model Registry-related Provisions should be placed before the reference to additional grantor information, as article 9 did not deal with such additional information.

45. With respect to article 11 of the draft Model Registry-related Provisions, it was agreed that, in view of the Commission's decisions with respect to article 9 of the draft Model Law (see para. 24 above): (a) in paragraph 1, reference should be made to "encumbered assets" rather than to "assets encumbered or to be encumbered"; and (b) in paragraph 2, reference should be made to a "generic" rather than to a "particular" category of assets.

46. With respect to article 15 of the draft Model Registry-related Provisions, it was agreed that, for reasons of clarity, paragraph 2(b) should be revised to read along the following lines: "if that person knows that the address has changed, at the most recent address if known or reasonably available to that person".

47. With respect to article 20 of the draft Model Registry-related Provisions, it was agreed that: (a) paragraphs 1(a), 2(a) and 3(a)(i) should be revised to refer to the secured creditor having been informed, rather than knowing, that the grantor would not authorize a registration, as the latter would be almost impossible; (b) a new paragraph 1(c) should be included to read along the following lines: "The grantor authorized the registration of a notice covering those assets but the authorization has been withdrawn and no security agreement covering those assets has been concluded"; and (c) paragraph 4 should also include a reference to the new paragraph 1(c).

48. With respect to article 24 of the draft Model Registry-related Provisions, it was agreed that the draft Guide to Enactment should explain the words "except to the extent it seriously misled third parties that relied on the erroneous information in the registered notice" in paragraph 6 along the lines they were explained in the Registry Guide (see paras. 215 and 217-220 of the Registry Guide). (For changes made to art. 24, paras. 6 and 7, see paras. 105-107 below.)

49. With respect to article 27 of the draft Model Registry-related Provisions, it was agreed that the draft Guide to Enactment should explain that the duties of the registrar would be determined by the relevant supervising authority in a law, regulation or other act implementing the Model Registry-related Provisions.

50. With respect to article 30, option A, paragraph 1, of the draft Model Registry-related Provisions it was agreed that reference should be made to "article 19, including any cancellation notice registered in accordance with article 20, paragraph 3 or 7", in order to avoid inadvertently creating the impression that, before removing

any information from the public registry record, the Registry would need to check and ensure that a cancellation notice met the conditions of article 20, paragraph 3 or 7.

51. After discussion, the Commission adopted articles 1, 5, 6, 8, 11, 15, 20 and 30 of the draft Model Registry-related Provisions subject to the above-mentioned changes and articles 2-4, 7, 9, 10, 12-14, 16-19, 21-23, 27-29 and 31-33 of draft Model Registry-related Provisions unchanged (for changes made to arts. 24-26 of the draft Model Registry-related Provisions, see paras. 105-110 below).

Chapter V. Priority of a security right

52. The Commission considered and adopted with some modifications a proposal for revised versions of articles 28, 30, 31, 36 and 39.

53. With respect to article 28, it was agreed that paragraphs 1 and 3 should be revised along the following lines to track more closely recommendation 76 of the Secured Transactions Guide:

> "Subject to articles 31, 36, 37 and 39-41, priority between competing security rights created by the same grantor in the same encumbered asset is determined according to the following rules:
>
> "(a) As between security rights that were made effective against third parties by registration of a notice in the Registry, priority is determined by the order of registration, without regard to the order of creation of the security rights;
>
> "(b) As between security rights that were made effective against third parties otherwise than by registration of a notice in the Registry, priority is determined by the order of third-party effectiveness; and
>
> "(c) As between a security right that was made effective against third parties by registration and a security right that was made effective against third parties otherwise than by registration of a notice in the Registry, priority is determined by the order of registration or third-party effectiveness, whichever occurs first."

54. It was also agreed that the draft Guide to Enactment should explain the application of that rule in cases in which the secured creditor registered a notice and in addition took actions necessary to achieve third-party effectiveness of its security right by another means. It was further agreed that paragraph 2 of article 28, dealing with security rights created by different grantors, should be set out in a separate article.

55. With respect to article 29, it was agreed that it should refer to the "time when", rather the "time period during which" the security right was not effective against third parties.

56. With respect to article 30, it was agreed that it should be made subject to article 39 and revised along the lines proposed to refer to a security right in proceeds of an encumbered asset having the same priority over a competing security right as the security right in the encumbered asset from which the proceeds arose (see para. 61 below).

57. With respect to article 31, it was agreed that it should be revised along the lines proposed and coordinated with article 11 (see para. 101 below).

58. With respect to article 35, it was agreed that: (a) in paragraph 1, the words "the rights of acquisition secured creditors in accordance with" were unnecessary and should be thus deleted; (b) in paragraph 2, the words "or at the same time" should be retained outside square brackets to address the situation where the time when a security right became effective in future assets coincided with the time when a judgement creditor took the steps referred to in paragraph 1; and (c) paragraph 2(a) should be revised to read along the following lines: "Before the secured creditor received a notice from the judgement creditor that the judgement creditor has taken the steps referred to in paragraph 1, or within [a short period of time to be specified by the enacting State] thereafter".

59. With respect to article 36, it was agreed that it should be revised along the lines proposed to address: (a) in paragraph 1, the priority of an acquisition security right in equipment, or in intellectual property or rights of a licensee under a licence of intellectual property primarily used or intended to be used by the grantor in the operation of its business; (b) in paragraph 2, the priority of an acquisition security right in inventory, or in intellectual property or rights of a licensee under a licence of intellectual property held by the grantor for sale or licence in the ordinary course of the grantor's business; and (c) in paragraph 3, the priority of an acquisition security right in consumer goods, or in intellectual property or rights of a licensee under a licence of intellectual property used or intended to be used by the grantor primarily for personal, family or household purposes.

60. With respect to article 37, it was agreed that the words "of a secured creditor other than a seller or lessor, or a licensor of intellectual property" should be deleted, as they were either stating the obvious or were confusing to the extent that they could be read to suggest that there might be more than one seller, lessor or licensor. It was also agreed that the draft Guide to Enactment should explain that an acquisition security right of a seller, lessor or licensor would have priority over all competing security rights held by other types of creditor.

61. With respect to article 39, it was agreed that it should be revised to set out along the lines proposed: (a) in paragraph 1, the rule that a security right in proceeds of an asset that was the subject of an acquisition security right had the same priority over a competing security right that the acquisition security right in the asset from which the proceeds arose had under article 36; and (b) in paragraph 2, the special rules for proceeds of inventory (priority to be determined in accordance with art. 28, if the proceeds were in the form of receivables, etc., and otherwise in accordance with art. 36).

62. With respect to article 49, paragraph 5, it was agreed that the draft Guide to Enactment should explain that, unlike articles 44, paragraph 2, and 47, paragraph 3, which provided a substantive rule for transferees of encumbered negotiable instruments and negotiable documents to acquire their rights free of the security right, article 49, paragraph 5, essentially referred the matter to other law mainly because, with respect to non-intermediated securities, the matter was more complex, and legal systems diverged more widely than with respect to negotiable instruments and negotiable documents.

63. In line with the approach taken in the other chapters of the draft Model Law, it was agreed that the heading of chapter V ("priority") did not need to be repeated in the heading of each article.

64. After discussion, the Commission adopted articles 28-30, 35-37 and 39 subject to the above-mentioned changes and articles 33-34, 38 and 40, 41 and 43-49 unchanged (for changes made to art. 31, see para. 101 below; for changes made to art. 32, see para. 103 below; and for changes made to art. 42, see para. 107 below).

Chapter VI. Rights and obligations of the parties and third-party obligors

65. With regard to article 51 and article 53, paragraph 1(a), it was agreed that the reference to "value" should be deleted, since reasonable care to preserve an encumbered asset would also result in preserving its value; and where preserving the value of an asset would be beyond the control of the person in possession, such a duty would be impossible for the person in possession to perform. It was also agreed that the draft Guide to Enactment could explain that the obligation to preserve both the encumbered asset and its value could arise under article 4, according to which parties should act in good faith and in a commercially reasonable manner.

66. With respect to article 52, it was agreed that, upon extinguishment of a security right, the encumbered assets ought to be returned to the grantor "or a person designated by the grantor" (see also para. 111 below). It was also agreed that the draft Guide to Enactment should explain that: (a) in some jurisdictions, the return to a person designated by the grantor would be viewed as a "return to the grantor"; and (b) the return of encumbered assets to a person designated by the grantor should take place only with the agreement of the secured creditor and in a commercially reasonable manner, and the grantor should bear the costs of such a return.

67. With respect to article 54, it was agreed that, in paragraph 1, reference should be made to a "written" request, and to a transferee under an outright transfer of a receivable by agreement (see para. 17, subpara. (b), above).

68. With respect to article 57, it was agreed it should be aligned more closely with article 14 of the Assignment Convention, on which article 57 was based.

69. With respect to article 59, paragraphs 2(a) and (b), it was agreed that reference should be made to the "contract giving rise to the receivable", rather than to the "original contract", as the term "original contract" was not defined in the draft Model Law (the same change should be made in art. 61, para. 1, and in the heading of art. 64).

70. With respect to article 60, it was agreed that, in paragraph 4, reference should be made to "a security right in a receivable created in favour of a secured creditor by the initial or any other secured creditor" rather than to "a subsequent security right", which was a term that was not defined in the draft Model Law (the same change should be made in art. 61, paras. 5 and 8), and at the end the words "in that receivable" should be added for more clarity.

71. After discussion, the Commission adopted articles 51-54, 57, 59-61 and 64 subject to the above-mentioned changes (for subsequent changes to art. 52, see para. 111 below) and articles 50, 55, 56, 58, 62-63 and 65-69 unchanged.

Chapter VII. Enforcement of a security right

72. With respect to article 72, it was agreed that: (a) both options should be set out in full and retained for each enacting State to choose the option that best fit its legal system; (b) to also cover co-owners of encumbered assets who would not be covered by the term "competing claimant", option A should be revised to refer to "the grantor, any other person with a right in the encumbered asset or the debtor"; and (c) option B should cover people who did not have a right in the encumbered asset (e.g. the insolvency representative in some jurisdictions) and be qualified to somehow narrow the number of people that could be covered by being considered as "affected" by the non-compliance of another person with the provisions of chapter VII.

73. With respect to article 74, paragraph 2, it was agreed that it should be deleted, as it subjected the rights of a higher-ranking secured creditor to rights granted by a lower-ranking secured creditor and was thus inconsistent with article 79, paragraphs 2 and 4.

74. With respect to article 75, it was agreed that: (a) paragraph 1 should be revised to provide that the secured creditor could obtain possession "either by applying or without applying" to a court or other authority; (b) paragraph 2 should be deleted as it did not refer to any specific conditions and the conditions of the civil procedure law of the enacting State would apply anyway; and (c) paragraph 4 should be retained but the words "or is of a kind sold on a recognized market" should be deleted, as they were unclear and not applicable in the context of the procedure for obtaining possession of the encumbered assets.

75. With respect to article 76, it was agreed that: (a) to align the chapeau of paragraph 4 with the wording of paragraphs 2 and 3, reference should be made to the decision of the secured creditor to "exercise the right provided in paragraph 1"; (b) to avoid confusion with the term "notice of the secured creditor's intention" used in the chapeau of paragraph 4, in paragraph 4(b), the word "notifies" should be replaced with the word "informs"; (c) for reasons of clarity, paragraphs 5-8 should refer to the notice referred to in paragraph 4. It was also agreed that the draft Guide to Enactment should explain that: (a) the period of time referred to in paragraphs 4(b) and 4(c) should be very brief; and (b) the fact that paragraph 8 did not require a notice for the out-of-court sale of an asset that was of a kind sold on a recognized market did not mean that a notice was not required for an out-of-court sale of a controlling stake in a company.

76. In that connection, the Commission considered a proposal that article 76, paragraph 7, should be amended to allow a notice to be sent to recipients other than the grantor in the language of the relevant Registry. That proposal was objected to. It was widely felt that such a safe harbour rule would apply only to some of the recipients of the notice of the secured creditor's intention to sell an encumbered asset out of court and would create uncertainty as the meaning of the term "relevant Registry" was not clear.

77. With respect to article 77, it was agreed that: (a) to better reflect its content, its heading should be revised to read along the following lines: "Distribution of the proceeds of a disposition of an encumbered asset and debtor's liability for any deficiency"; (b) in paragraph 2(a), the word "net" should be deleted as the remaining words clarified the meaning of "net proceeds"; and (c) in paragraph 3, the

word "shortfall" should be replaced with the word "amount". It was also agreed that the draft Guide to Enactment should explain that: (a) the distribution of proceeds would require that the secured creditor report and provide an account to the grantor, the debtor and any subordinate competing claimant; and (b) any amount owing to the secured creditor after application of the net proceeds to the secured obligation would be an amount owing after deduction of any amount owing to the grantor by the secured creditor.

78. With respect to article 78, it was agreed that: (a) for reasons of consistency, the text of paragraph 3 should be coordinated with the equivalent text of article 76, paragraph 5(b); (b) for reasons of clarity, paragraph 4 should be revised and set out in two separate paragraphs; and (c) for reasons of clarity and precision, reference should be made in the new paragraph 5 to "consent in writing", rather than to "affirmative consent".

79. With respect to article 79, it was agreed that: (a) in paragraphs 1 and 2, the words "except rights that have priority over the right of the enforcing secured creditor" should be deleted and the remaining text in square brackets should be recast as a question for the enacting State (using words along the lines of the words "whether or not"); and (b) in paragraph 5, the words "provided that it had no knowledge of a violation of the provisions of this chapter that materially prejudiced the rights of the grantor or another person" should be retained outside square brackets.

80. With respect to article 81, it was agreed that: (a) in line with the Commission's decision with respect to article 1 (see para. 17, subpara. (b), above), in paragraph 1, reference should be made to an outright transfer "by agreement", and the words "before or after default of the transferor" that were not relevant in the case of an outright transfer should be replaced with words along the following lines: "at any time after payment becomes due"; and (b) in view of the Commission's decision that articles 70-80 should not apply to outright transfers (see, para. 17, subpara. (a), above), paragraphs 3 and 5 of article 80 should be reiterated in article 81 to ensure that they would apply to outright transfers.

81. After discussion, the Commission adopted articles 72, 74-79 and 81 subject to the above-mentioned changes and articles 70-71, 73 and 80 unchanged.

Chapter VIII. Conflict of laws

82. With respect to article 83, it was agreed that: (a) to cover priority conflicts with the rights of any competing claimant, in paragraph 2, reference should be made to "the right of a competing claimant", rather than to "a competing security right made effective against third parties by another method"; and (b) paragraph 4(a) should be deleted as it simply restated the *lex situs* rule of paragraph 1.

83. With respect to article 85, it was agreed that, for reasons of clarity, it should be revised to read along the following lines: "either arises from the sale or lease of immovable property or is secured by immovable property". In that connection, the Commission considered but did not adopt a proposal to limit the application of article 85 to receivables secured by immovable property identified or identifiable in the contract that gave rise to the receivable. It was stated that, with that revision, it would be easier for the secured creditor to find out that a receivable in which it had a security right was secured by immovable property and, as a result, a different law

would apply to its security right in the receivable. It was widely felt, however, that the rule in article 85 was appropriate and should apply to all receivables secured by immovable property.

84. With respect to article 86, it was agreed that the law applicable to the enforcement of a security right in a tangible asset should be the law of the State in which the encumbered asset was located at the time of commencement of enforcement, and thus the reference to the law of the State in which enforcement took place should be deleted.

85. With respect to article 89, paragraph 1(b), it was agreed that the draft Guide to Enactment should explain the meaning of the words "the time the issue arises" with illustrations. It was stated, for example, that: (a) the issue of the priority of a security right over the rights of the grantor's insolvency representative would arise when the insolvency proceedings commenced; (b) the issue of the priority of a security right as against another security right would arise when the acts that gave rise to the priority conflict arose; and (c) an issue would arise in litigation upon commencement of the litigation proceedings.

86. With regard to article 93, it was agreed that it should be revised to conform more closely to recommendation 217 of the Secured Transactions Guide.

87. With respect to article 97, it was agreed that option C should be retained, while options A and B should be deleted. It was widely felt that option C stated a clear and simple rule that would apply to all issues, distinguishing only between debt and equity securities, and preventing the secured creditor from manipulating the applicable law by moving certificated securities from State to State.

88. With respect to article 98, it was agreed that it should be revised to read along the following lines: "If the law applicable to an issue is the law of a State that comprises one or more territorial units each of which has its own rules of law in respect of that issue: (a) any reference in the provisions of this chapter to the law of a State means the law in force in the relevant territorial unit; and (b) the internal conflict of laws rules of that State, or, in the absence of such rules, of that territorial unit determine the relevant territorial unit whose substantive law is to apply". It was also agreed that, as it was not an asset-specific rule, article 98 should be moved to the end of section A of chapter VIII that contained general rules.

89. With respect to the headings of the provisions in chapter VIII, in line with the Commission's decision not to include the chapter title in the title of each article (see para. 63 above), it was agreed that the words "Law applicable" should be deleted from the headings of the provisions in chapter VIII.

90. After discussion the Commission adopted articles 83, 85, 86, 93, 97 and 98 subject to the above-mentioned changes and articles 82, 84, 87, 88-92 and 94-96 unchanged.

Chapter IX. Transition

91. With respect to article 100, paragraph 1(a), it was agreed that the reference to "the law applicable under the conflict-of-laws rules of the enacting State" should be retained outside square brackets.

92. With respect to article 103, it was agreed that a paragraph 5 should be added that would read along the following lines: "If a prior security right referred to in paragraph 2 was made effective against third parties by registration under prior law, the time of registration under prior law is the time to be used for the purposes of applying the priority rules of this Law that refer to the time of registration of a security right".

93. With respect to article 104, it was agreed that paragraph 1 should be deleted as it might be inconsistent with article 103, paragraph 2, its wording might be unclear, and article 103, as modified, already addressed comprehensively the transitional rules for determining the time of third-party effectiveness of prior security rights for the purposes of applying the priority provisions of the draft Model Law.

94. After discussion, the Commission adopted articles 100, 103 and 104 subject to the above-mentioned changes and articles 99, 101, 102 and 105 unchanged.

Miscellaneous provisions

95. The Commission resumed its discussion of article 2, subparagraph (t), and articles 3, 11, 23, 31, 32, 42 and 52 of the draft Model Law, as well as article 24, paragraph 6, and articles 25 and 26 of the draft Registry-related Provisions.

96. With respect to article 3, it was suggested that a new paragraph should be added to read along the following lines: "Nothing in this Law affects any agreement to the use of alternative dispute resolution, including arbitration, mediation, conciliation and online dispute resolution". Strongly held differing views were expressed.

97. One view was that the proposed text should not be included in article 3. It was stated that that text was either superfluous as it stated the obvious or harmful as it failed to address the issue of arbitrability of disputes arising with respect to security agreements or security rights and the need to protect the rights of third parties, but also inappropriately indicated a preference for alternative dispute resolution (ADR) over judicial proceedings. In addition, it was observed that arbitrability was a matter to be dealt with in arbitration law and thus a matter for Working Group II (Arbitration and Conciliation), on the agenda of which it was since 1999.[9] Moreover, it was said that the fact that a regional text or the national laws of some States in a region of the world included such a provision did not mean that a text prepared by an international body such as UNCITRAL and addressed to the whole world should or could follow the same approach. As a compromise, it was thus suggested that the matter ought to be discussed in the draft Guide to Enactment (see A/CN.9/885/Add.3, paras. 55 and 58) and placed on the future work agenda of the Commission (see para. 125 below).

98. The prevailing view, however, was that the proposed text should be included in article 3. It was stated that the use of ADR to resolve disputes arising with respect to security agreements or security rights was essential, in particular for developing countries, to attract investment. In that connection, it was observed that the often

[9] Ibid., *Fifty-fourth Session, Supplement No. 17* (A/54/17), paras. 351-353 and 380. At its forty-fourth session, in 2011, the Commission recalled that the issue of arbitrability should be maintained by the Working Group on its agenda (ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 203).

inefficient judicial enforcement mechanisms were bound to have a negative impact on the availability and the cost of credit. In addition, it was pointed out that the proposed text was of significant educational importance as it made a statement in support of ADR, without interfering with the way in which the various legal systems dealt with arbitrability, the protection of rights of third parties or access to justice. Moreover, it was said that the matter involved the relationship between the grantor and the secured creditor and thus it could also be addressed in the chapter on the rights and obligations of the parties. After discussion, it was agreed that the proposed text should be included in article 3 with appropriate explanations in the draft Guide to Enactment, on the understanding that it did not prejudice the discussion of arbitrability, the protection of the rights of third parties or access to justice.

99. With respect to article 11, it was agreed that it should be revised to read along the following lines:

> "1. A security right in a tangible asset that is commingled in a mass extends to the mass. A security right in a tangible asset that is transformed into a product extends to the product.
>
> "2. A security right that extends to a mass is limited to the same proportion of the mass as the quantity of the encumbered asset bore to the quantity of the entire mass immediately after the commingling.
>
> "3. A security right that extends to a product is limited to the value of the encumbered asset immediately before it became part of the product."

100. It was also agreed that the definition of the term "mass or product" in article 2, subparagraph (t), should be revised to read along the following lines: "'Mass' means a tangible asset which results when tangible assets are so commingled with other tangible assets of the same kind that they have lost their separate identity"; and "'Product' means a tangible asset which results when tangible assets are so physically associated or united with other tangible assets of a different kind, or when one or more tangible assets are so manufactured, assembled or processed that they have lost their separate identity".

101. To coordinate it with article 11 as revised, it was agreed that article 31, paragraph 3, should be revised to read along the following lines: "For the purposes of paragraph 2, the obligation secured by a security right that extends to the mass or product is subject to the limitation determined in accordance with article 11." It was also agreed that appropriate adjustments should be made to the headings of the relevant articles to refer to the "transformation", rather than to commingling, of assets into a product.

102. With respect to article 23, it was agreed that it should be revised to read along the following lines: "An acquisition security right in consumer goods with an acquisition price below [an amount to be specified by the enacting State] is effective against third parties upon its creation without any further act".

103. It was also agreed that, to complete the treatment of acquisition security rights in consumer goods, a priority rule should be added as a new paragraph at the end of article 32 that should read along the following lines: "A buyer acquires its rights free of, and the rights of a lessee are not affected by, an acquisition security right in consumer goods unless the security right is made effective against third parties

otherwise than under article 23 before the buyer or lessee acquires its rights in the goods".

104. It was noted that: (a) in both article 23 and the new paragraph of article 32, the reference to a transferee was deleted to avoid covering a donee (see para. 35 above); and (b) the reference to a licensee was deleted because a licence in consumer goods either did not exist at all or might exist only in very rare cases.

105. With respect to article 24, paragraph 6, of the draft Model Registry-related Provisions, it was agreed that it should be revised to read along the following lines:

> "6. Notwithstanding paragraph 4, an error in the period of effectiveness of registration specified in an initial or amendment notice, does not render the registration of the notice ineffective, except to the extent that third parties relied on the erroneous information in the registered notice.
>
> "7. Notwithstanding paragraph 4, an error in the maximum amount for which the security right may be enforced entered in an initial or amendment notice, does not render the registration of the notice ineffective. However, its effectiveness against third parties who relied on the amount stated in the notice is limited to that amount or the maximum amount indicated in the security agreement, whichever is lower".

106. After further discussion, it was agreed that the above-proposed article 24, paragraph 7, should be revised to read along the following lines: "Notwithstanding paragraph 4, an error in the maximum amount specified in an initial or amendment notice does not render the registration ineffective, but the priority of the security right is limited to the maximum amount stated in the notice or in the security agreement, whichever is lower".

107. In addition, it was agreed that the above-proposed and agreed paragraphs 6 and 7 of article 24 should appear in the final text of the Model Registry-related Provisions within square brackets and be accompanied with the relevant footnotes drawing the attention of enacting States to the fact that those provisions would be necessary depending on whether they had decided to implement option B or C of article 14 and article 8, subparagraph (e), respectively, of the Model Registry-related Provisions. Moreover, it was agreed that references to the "maximum amount" throughout the draft Model Law should be coordinated. It was also agreed that article 42, paragraph 3, of the draft Model Law should be deleted as it addressed the same issue addressed in the above-proposed and agreed article 24, paragraph 7 (see para. 106 above).

108. With respect to article 25 of the draft Model Registry-related Provisions, it was agreed that it should be revised to read along the following lines:

> "1. Subject to paragraphs 2 and 3, the third-party effectiveness and priority of a security right that was made effective against third parties by registration of a notice is not affected by a change in the identifier of the grantor after the notice is registered.
>
> "2. If the identifier of the grantor changes after a notice is registered, a competing security right created by the grantor that was made effective against third parties after the change has priority over the security right to which the notice relates unless the security right to which the notice relates is made

effective against third parties by a method other than registration of a notice, or an amendment notice disclosing the new identifier of the grantor is registered:

"(a) Before the expiry of [a short period of time to be specified by the enacting State] after the change; or

"(b) After the expiry of the period referred to in paragraph 2(a) but before the competing security right is made effective against third parties.

"3. If the identifier of the grantor changes after a notice is registered, a buyer to whom the encumbered asset is sold after the change acquires its rights free of the security right to which the notice relates unless it is made effective against third parties by a method other than registration of a notice, or an amendment notice disclosing the new identifier of the grantor is registered:

"(a) Before the expiry of the period referred to in paragraph 2(a); or

"(b) After the expiry of the period referred to in paragraph 2(a) but before the buyer acquires its rights in the asset.

"4. Paragraphs 2 and 3 do not apply if the information in the registered notice referred to in paragraph 1 would be retrieved by a search using the new identifier of the grantor as a search criterion".

109. It was also agreed that a footnote should be added to draw the attention of the enacting State to the fact that the above-proposed and agreed article 25, paragraph 4, would be necessary only for enacting States that would implement option B of article 23, paragraph 1, of the Model Registry-related Provisions.

110. It was also agreed that article 26 of the draft Model Registry-related Provisions should be revised to read along the following lines:

"Option A

"1. Subject to paragraphs 2 and 3, the third-party effectiveness and priority of a security right in an encumbered asset that was made effective against third parties by registration of a notice is not affected by a sale of the encumbered asset after the notice is registered to a buyer that acquires its rights subject to the security right under article 32 of the Law.

"2. If an encumbered asset covered by a registered notice is sold to a buyer that acquires its rights subject to the security right to which the notice relates under article 32 of the Law, a competing security right created by the buyer that is made effective against third parties after the sale has priority over the security right to which the notice relates unless the security right to which the notice relates is made effective against third parties by a method other than registration of a notice, or an amendment notice is registered adding the buyer as a new grantor:

"(a) Before the expiry of [a short period of time to be specified by the enacting State] after the sale; or

"(b) After the expiry of the period referred to in paragraph 2(a) but before the competing security right is made effective against third parties.

"3. If an encumbered asset covered by a registered notice is sold to a buyer that acquires its rights subject to the security right to which the notice relates under article 32 of the Law, a subsequent buyer to whom the initial buyer sells the encumbered asset acquires its rights free of the security right to which the notice relates unless it is made effective against third parties by a method other than registration of a notice, or an amendment notice adding the initial buyer as a new grantor is registered:

"(a) Before the expiry of the period referred to in paragraph 2(a); or

"(b) After the expiry of the period referred to in paragraph 2(a) but before the subsequent buyer acquires its rights in the encumbered asset.

"4. The third-party effectiveness and priority of a security right in intellectual property that was made effective against third parties by registration of a notice is not affected by a sale of the intellectual property after the notice is registered to a buyer that acquires its rights subject to the security right under article 32 of the Law.

"Option B

"1. Subject to paragraphs 2 to 4, the third-party effectiveness and priority of a security right in an encumbered asset that was made effective against third parties by registration of a notice is not affected by a sale of the encumbered asset after the notice is registered to a buyer that acquires its rights subject to the security right under article 32 of the Law.

"2. If an encumbered asset covered by a registered notice is sold to a buyer that acquires its rights subject to the security right to which the notice relates under article 32 of the Law, a competing security right created by the buyer that is made effective against third parties after the secured creditor acquires knowledge of the sale and the identifier of the buyer has priority over the security right to which the notice relates unless the security right to which the notice relates is made effective against third parties by a method other than registration of a notice, or an amendment notice adding the buyer as a new grantor is registered:

"(a) Before the expiry of [a short period of time to be specified by the enacting State] after the secured creditor acquires the relevant knowledge; or

"(b) After the expiry of the period referred to in paragraph 2(a) but before the competing security right is made effective against third parties.

"3. If an encumbered asset covered by a registered notice is sold to a buyer that acquires its rights subject to the security right to which the notice relates under article 32 of the Law, a subsequent buyer to whom the encumbered asset is sold after the secured creditor acquires knowledge of the sale and the identifier of the buyer acquires its rights free of the security right to which the notice relates unless it is made effective against third parties by a method other than registration of a notice, or an amendment notice adding the identifier of the initial buyer as a new grantor is registered:

"(a) Before the expiry of the period referred to in paragraph 2(a); or

"(b) After the expiry of the period referred to in paragraph 2(a) but before the subsequent buyer acquires its rights in the encumbered asset.

"4. If there are one or more subsequent sales of the encumbered asset before the secured creditor acquires knowledge of the sale and the identifier of the buyer, the obligation to register an amendment notice under paragraphs 2 and 3 is satisfied if the secured creditor registers an amendment notice adding the identifier of the most recent buyer of which it has knowledge as a new grantor.

"5. The third-party effectiveness and priority of a security right in intellectual property that was made effective against third parties by registration of a notice is not affected by a sale of the intellectual property after the notice is registered to a buyer that acquires its rights subject to the security right under article 32 of the Law.

"Option C

"The third-party effectiveness and priority of a security right in an encumbered asset that is made effective against third parties by registration of a notice is not affected by a sale of the asset after the notice is registered to a buyer that acquires its rights subject to the security right under article 32 of the Law".

111. With respect to article 52 (see para. 66 above), it was agreed that it should be revised to read along the following lines: "Upon extinction of a security right in an encumbered asset, a secured creditor in possession must return the asset to the grantor or deliver the asset to a person designated by the grantor".

112. The Commission next considered a proposal for a new article that would follow article 79 and would read along the following lines: "If the maximum amount entered in an initial or amendment notice is lower than that indicated in the security agreement to which the notice relates, the security right to which the notice relates may be enforced only up to the amount entered in the notice, unless there are no other competing claimants that relied on the maximum amount entered in the notice".

113. While some support was expressed, the proposal was objected to. It was widely felt that the above-proposed and agreed article 24, paragraph 7 (see paras. 106-107 above), was sufficient to address situations in which the maximum amount stated in a registered notice was different from the maximum amount stated in the security agreement by providing that the priority of a security right was limited to the maximum amount stated in the notice or in the security agreement, whichever was lower.

114. After discussion, the Commission adopted article 2, subparagraph (t), and articles 3, 11, 23, 31, 32, 42 and 52 of the draft Model Law, as well as article 24, paragraphs 6 and 7, and articles 25 and 26 of the draft Model Registry-related Provisions subject to the above-mentioned changes.

115. At the close of its deliberations on the draft Model Law, the Commission agreed that the Secretariat should be given a mandate to make the changes approved by the Commission, as well as any consequential editorial changes, avoiding making changes where it was not clear whether a change was editorial or substantive. The Commission also agreed that the Secretariat should review the entire draft Model Law to ensure consistency in the terminology used.

3. Adoption of the UNCITRAL Model Law on Secured Transactions

116. Before adopting the UNCITRAL Model Law on Secured Transactions (the "Model Law"), the Commission considered its name in the official languages other than English. The suggestion was made that in Spanish the Model Law should be named as follows: "Ley Modelo sobre Garantías Mobiliarias". It was stated that that name was more correct in Spanish and more understandable for Spanish language readers. It was also said that that was the Spanish name of the "Model Inter-American Law on Secured Transactions". While initially diverging views were expressed as to whether the word "reales" should be added to qualify the word "garantías" and distinguish proprietary from personal security rights, it was ultimately agreed that that was not necessary as the word "mobiliarias", which could not refer to personal security rights, was sufficient to indicate that only proprietary security rights were meant.

117. The concern was expressed, however, that the suggested new Spanish name of the Model Law might cause confusion as the term "secured transactions" ("opérations garanties" in French, "operaciones garantizadas" in Spanish) had been used for several years in connection with the Secured Transactions Guide. To address that concern, it was agreed that a note should be added at the beginning of the Model Law to explain that, as explained in the Secured Transactions Guide, the term "secured transaction" meant a transaction that created a security right and thus there was no substantive difference in the terminology used. The concern was also expressed that the suggested new Spanish name of the Model Law would affect the name of the Model Law in the language versions other than English and Spanish. In response, it was noted that the name of the Model Law in those other languages also should be correct and understandable for the readers of those languages.

118. After discussion, it was agreed that the Spanish name of the Model Law should be "Ley Modelo de la CNUDMI sobre Garantías Mobiliarias" and the French name should be "Loi type de la CNUDCI sur les sûretés mobilières" (for the same reason mentioned in para. 116 above for the Spanish version, the term "réelles" did not need to qualify the term "sûretés"). It was also agreed that the name of the Model Law in the language versions other than English, French and Spanish should be as consistent as possible with the name of the Model Law in the English, French and Spanish language versions and, at the same time, use terminology that would be as correct and easily understood as possible by the readers of that language.

119. At its 1032nd meeting on 1 July, the Commission adopted the following decision:

"*The United Nations Commission on International Trade Law*,

"*Recalling* General Assembly resolution 2205 (XXI) of 17 December 1966, which established the United Nations Commission on International Trade Law with the purpose of furthering the progressive harmonization and unification of the law of international trade in the interests of all peoples, in particular those of developing countries,

"*Recalling also* General Assembly resolutions 56/81 of 12 December 2001, 63/121 of 11 December 2008, 65/23 of 6 December 2010 and 68/108 of 16 December 2013 in which the General Assembly recommended that States consider or continue to consider becoming parties to the United Nations Convention

on the Assignment of Receivables in International Trade (New York, 2001)[10] and giving favourable consideration to the UNCITRAL Legislative Guide on Secured Transactions (2007),[11] the Supplement on Security Rights in Intellectual Property[12] and the UNCITRAL Guide on the Implementation of a Security Rights Registry,[13] respectively,

"*Further recalling* that, at its forty-sixth session, in 2013, it entrusted Working Group VI (Security Interests) with the preparation of a model law on secured transactions based on the recommendations of the UNCITRAL Legislative Guide on Secured Transactions (2007) and consistent with all texts prepared by UNCITRAL on secured transactions,[14]

"*Noting* that the Working Group devoted six sessions, from 2013 to 2016, to the preparation of the draft model law on secured transactions (the 'draft Model Law'),[15]

"*Further noting* that, at its forty-eighth session, in 2015, the Commission approved the substance of the registry-related provisions of the draft Model Law,[16]

"*Further noting* with satisfaction that the draft Model Law is based on the recommendations of the UNCITRAL Legislative Guide on Secured Transactions and consistent with all texts prepared by UNCITRAL on secured transactions, and with those texts thus provides comprehensive guidance to States with respect to legal and practical issues that need to be addressed when implementing a modern secured transactions regime,

"*Recognizing* that an efficient secured transactions regime with a publicly accessible security rights registry of the kind provided for in the draft Model Law is likely to increase access to affordable secured credit and thus promote economic growth, sustainable development, the rule of law and financial inclusion, as well as assist in combating poverty,

"*Recognizing also* that the harmonization of national secured transactions regimes and registries on the basis of the draft Model Law is likely to increase the availability of secured credit across national borders and thus facilitate the development of international trade, which, if achieved on the basis of equality and mutual benefit to all States, is an important element in promoting friendly relations among States,

"*Recognizing further* that secured transactions law reform could not be effectively implemented without the establishment of an efficient, publicly accessible security rights registry where information about the potential existence of

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[10] General Assembly resolution 56/81, annex. Also available as United Nations publication, Sales No. E.04.V.14.

[11] United Nations publication, Sales No. E.09.V.12.

[12] United Nations publication, Sales No. E.11.V.6.

[13] United Nations publication, Sales No. E.14.V.6.

[14] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 194 and 332.

[15] For the reports of those sessions of the Working Group, see A/CN.9/796, A/CN.9/802, A/CN.9/830, A/CN.9/836, A/CN.9/865 and A/CN.9/871.

[16] *Official Records of the General Assembly, Seventieth Session, Supplement No. 17* (A/70/17), para. 214.

a security right in movable assets may be registered, and that States urgently need guidance with respect to the establishment and operation of such registries,

"*Expressing* its appreciation to international intergovernmental and non-governmental organizations active in the field of secured transactions law reform for their participation in and support for the development of the draft Model Law,

"*Having considered* the draft Model Law at its forty-ninth session, in 2016,

"*Drawing attention* to the fact that the text of the draft Model Law was circulated for comment before the forty-ninth session of the Commission to all Governments invited to attend sessions of the Commission and the Working Group as members and observers and that the comments received were before the Commission at its forty-ninth session,[17]

"*Considering* that the draft Model Law has received sufficient consideration and has reached the level of maturity for it to be generally acceptable to States,

"1. *Adopts* the UNCITRAL Model Law on Secured Transactions, consisting of the text contained in documents A/CN.9/884 and addenda 1-4, with amendments adopted by the Commission at its forty-ninth session, and authorizes the Secretariat to edit and finalize the text of the UNCITRAL Model Law on Secured Transactions pursuant to the deliberations of the Commission at that session;

"2. *Requests* the Secretary-General to publish the UNCITRAL Model Law on Secured Transactions, including electronically and in the six official languages of the United Nations, and to disseminate it broadly to Governments and other interested bodies;

"3. *Recommends* that all States give favourable consideration to the UNCITRAL Model Law on Secured Transactions when revising or adopting legislation relevant to secured transactions, and invites States that have used the Model Law to advise the Commission accordingly;

"4. *Also recommends* that, where necessary, States continue giving favourable consideration to the UNCITRAL Guide on the Implementation of a Security Rights Registry when revising relevant legislation, administrative regulations or guidelines, and to the UNCITRAL Legislative Guide on Secured Transactions and the Supplement on Security Rights in Intellectual Property when revising or adopting legislation relevant to secured transactions, and invites States that have used the guides to advise the Commission accordingly;

"5. *Also recommends* that all States continue to consider becoming parties to the United Nations Convention on the Assignment of Receivables in International Trade, the principles of which are also reflected in the UNCITRAL Model Law on Secured Transactions, and the optional annex of which refers to the registration of notices with regard to assignments."

[17] A/CN.9/886, A/CN.9/887 and A/CN.9/887/Add.1.

B. Consideration of the draft Guide to Enactment of the draft Model Law on Secured Transactions

120. The Commission recalled that, at its forty-eighth session, in 2015, it had agreed that the draft Guide to Enactment should be prepared and referred that task to the Working Group.[18] The Commission noted that the Working Group, at its twenty-eighth session, had noted that, in order to complete the draft Guide to Enactment, it might need an additional one or two sessions, and, at its twenty-ninth session, decided to request the Commission one or two sessions for that purpose (A/CN.9/865, para. 104, and A/CN.9/871, para. 91, respectively).

121. At its current session, the Commission had before it the draft Guide to Enactment (A/CN.9/885 and addenda 1-4). The Commission noted that the draft Guide to Enactment provided background and explanatory information that could assist States in considering the Model Law for adoption. In addition, the Commission noted with appreciation that the draft Guide to Enactment was already at an advanced stage. Moreover, the Commission noted that a number of issues were referred to the draft Guide to Enactment even at its current session, and thus the draft Guide to Enactment was an extremely important text for the implementation and interpretation of the Model Law.

122. After discussion, the Commission agreed to give the Working Group up to two sessions to complete its work and submit the draft Guide to Enactment to the Commission for final consideration and adoption at its fiftieth session, in 2017. In addition, the Commission agreed that, if the Working Group completed its work in less than two sessions, it should use any time remaining to discuss its future work in a session or in a colloquium to be organized by the Secretariat. Moreover, the Commission agreed that, subject to further discussion of the overall future work of the Commission (see chapter XV below), a colloquium to discuss future work on security interests should be held even if the Working Group used the full time of the two sessions to complete its work on the draft Guide to Enactment.

123. Having mandated work on the draft Guide to Enactment, the Commission requested the Secretariat to reflect that decision in its publications programme and take any other measures to ensure future publication of any final text resulting from that work, including electronically and in the six official languages of the United Nations.

C. Possible future work in the area of security interests

124. The Commission recalled that, at its forty-eighth session, in 2015, it had noted that, at its forty-third session, in 2010, it had placed on its future work programme the preparation of a contractual guide on secured transactions and a uniform law text on intellectual property licensing.[19] At the current session, the Commission decided that those matters should be retained on its future work programme and considered at a future session on the basis of notes to be prepared by the Secretariat,

[18] *Official Records of the General Assembly, Seventieth Session, Supplement No. 17* (A/70/17), para. 216.

[19] Ibid., para. 217.

after a colloquium or expert group meeting, to be held within existing resources (see para. 122 above).

125. In addition, the Commission decided that the following topics should also be placed on its future work programme and considered at a future session on the basis of notes to be prepared by the Secretariat, after a colloquium or expert group meeting, to be held within existing resources (see para. 122 above): (a) the question whether the Model Law and the draft Guide to Enactment might need to be expanded to address matters related to secured finance to micro, small and medium-sized enterprises (MSMEs); (b) the question whether any future work on a contractual guide on secured transactions should discuss contractual issues of concern to MSMEs (e.g. transparency issues); (c) any question that might not have already been addressed in the area of warehouse receipt financing (e.g. the negotiability of warehouse receipts); and (d) the question whether disputes arising from security agreements could be resolved through ADR mechanisms (see A/CN.9/871, paras. 83-86, and A.CN.9/885/Add.3, paras. 55 and 58; see also paras. 96 and 97 above).

D. Coordination and cooperation

126. The Commission noted with appreciation the efforts of the Secretariat in coordinating and cooperating with a number of organizations active in the area of security interests. It was noted that the Secretariat had provided comments on the World Bank Principles contained in the World Bank Insolvency and Creditor Rights Standard (the "Standard") and was expecting to receive the comments of the World Bank on a revised draft of the Standard that contained the key recommendations of the Secured Transactions Guide. In addition, it was noted that the Secretariat had provided suggestions to the European Commission with a view to ensuring a coordinated approach to the law applicable to the third-party effects of assignments of receivables, taking into account the approach followed in the Assignment Convention, the Secured Transactions Guide and the Model Law, and noted that the European Commission was to issue a proposal on that topic for consultation. Moreover, the Commission noted that Unidroit had referred to an inter-governmental meeting the draft fourth protocol to the Convention on International Interests in Mobile Equipment on matters specific to agricultural, construction and mining equipment, and requested the Secretariat to attend that meeting with a view to ensuring the avoidance of duplication of efforts that could lead to overlap and conflict with the Commission's work on security interests. The Commission also noted with appreciation the Secretariat's coordination efforts with the World Bank Group, the Organization of American States (OAS) and the Asian Pacific Economic Cooperation (APEC) in providing technical assistance and assistance with respect to local capacity-building in the area of security interests.

127. After discussion, the Commission renewed the mandate given to the Secretariat to continue with those coordination and cooperation efforts. It was widely felt that cooperation should continue and expand, focusing on technical assistance and training activities, including with respect to security rights registries. It was also generally agreed that the joint publication *UNCITRAL, Hague*

Conference and Unidroit Texts on Security Interests[20] should be updated to include texts adopted by those and other organizations on security interests after the publication was issued. It was further agreed that consideration should be given to including in the publication to be updated references to the Model Inter-American Law on Secured Transactions and, if possible, other regional texts on security interests.

128. Having mandated work on the joint publication on security interests, the Commission requested the Secretariat to reflect that decision in its publications programme and take any other measures to ensure future publication of any final text resulting from that work, including electronically and in the six official languages of the United Nations.

IV. Consideration of issues in the area of arbitration and conciliation

A. Finalization and adoption of the revised UNCITRAL Notes on Organizing Arbitral Proceedings

1. Introduction

129. The Commission recalled its decision at the forty-sixth session, in 2013, that Working Group II (Arbitration and Conciliation) should undertake work on the revision of the UNCITRAL Notes on Organizing Arbitral Proceedings[21] (referred to as the "Notes").[22] The Commission further recalled that, at its forty-seventh session, in 2014, it had agreed that the Working Group should commence work on the revision of the Notes and, in so doing, should focus on matters of substance, leaving drafting to the Secretariat.[23]

130. The Commission recalled that at its forty-eighth session, in 2015, the Commission had before it the draft version of the Notes (contained in document A/CN.9/844), as it resulted from the work of the Working Group at its sixty-first (Vienna, 15-19 September 2014) and sixty-second (New York, 2-6 February 2015) sessions.[24] At that session, the Commission had approved that draft version of the Notes in principle and requested the Secretariat to prepare an updated text in accordance with the deliberations and decisions at that session for finalization and adoption at the forty-ninth session, in 2016.[25] The Commission had also agreed that the Secretariat could seek input from the Working Group on specific issues during its sixty-fourth session (New York, 1-5 February 2016).[26]

131. At its current session, the Commission had before it the report of the Working Group on the work of its sixty-fourth session (A/CN.9/867), during which

[20] United Nations publication V.12-51563.
[21] *UNCITRAL Yearbook*, vol. XXVII: 1996, part three, annex II.
[22] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 130.
[23] Ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 128.
[24] Ibid., *Seventieth Session, Supplement No. 17* (A/70/17), para. 15.
[25] Ibid., para. 133.
[26] Ibid.

specific issues in the draft version of the Notes (contained in document A/CN.9/WG.II/WP.194) were considered. The Commission had before it the text of the draft revised Notes as contained in document A/CN.9/879 (referred to below as the "draft revised Notes"), which reflected the deliberations of the Working Group at that session.

2. Consideration of the draft revised Notes

Title of the revised Notes

132. The Commission agreed that the revised Notes should be titled the "2016 UNCITRAL Notes on Organizing Arbitral Proceedings" and also referred to as the second edition of the Notes.

Preface

133. The Commission approved the preface without any modification.

Introduction

134. The Commission agreed to replace the word "needs" by the words "will need" in the last sentence of paragraph 5 of the draft revised Notes to clarify that the arbitral tribunal could raise a matter when appropriate, without having to wait until the matter actually came up. With respect to the last sentence of paragraph 8 of the draft revised Notes, a suggestion to include a reference to the legal tradition at the place of arbitration when choosing a set of arbitration rules for reference purposes did not receive support. Subject to the modification in paragraph 5 of the draft revised Notes, the Commission approved the introduction.

Annotations

135. The Commission approved draft revised Notes 1, 4, 6, 7, 10, 12, 15, 16, 18 and 20 without any modification.

Note 2 (Language or languages of the arbitral proceedings)

136. With respect to the second sentence in paragraph 25 of the draft revised Notes, it was agreed that the words "any of the" should replace the words "that" before the words "multiple languages" to avoid giving the impression that all languages must be used during the arbitral proceedings. Subject to that modification, the Commission approved draft revised Note 2.

Note 3 (Place of arbitration)

137. With respect to paragraph 29 of the draft revised Notes, the Commission agreed that the words "the nature and frequency of" in subparagraph (ii) should be deleted. Subject to that modification, the Commission approved draft revised Note 3.

Note 5 (Costs of arbitration)

138. The Commission noted that paragraph 40 had been included in the draft revised Notes following deliberations of the Working Group at its sixty-fourth session to indicate that in-house costs might also be an item of the arbitration costs. It was noted that a reference to in-house costs was important as the

draft revised Notes should not mistakenly imply that only the legal fees of external counsel would be recoverable. It was further noted that the treatment of in-house costs as part of arbitration costs was controversial and thereby paragraph 40 simply aimed at presenting the different approaches.

139. It was widely felt that paragraphs 40 and 41 appropriately addressed the relevant issues in a balanced manner, and contained references to possible criteria used by tribunals in awarding in-house costs. However, a number of suggestions were made in relation to paragraph 40.

140. It was suggested to delete references to "management and other costs" and "managing directors, experts and other staff members", as they indicated too wide and uncertain a category of costs and such costs should not be recoverable. In this regard, it was argued that paragraph 40 should be limited to costs relating to legal representation. That suggestion did not receive support on the ground that there was no basis on which to limit recoverable costs to legal representation.

141. A suggestion was made to highlight in paragraph 40 that "parties" included States and government agencies. It was explained that costs relating to internal counsel or representatives of States and government agencies in investor-State arbitration were usually not referred to as "in-house costs". However, it was agreed that the suggested clarification was not necessary as the draft revised Notes adopted a generic approach and such distinction with regard to the parties were not made in other parts of the draft revised Notes.

142. A suggestion was made that paragraph 40 should provide that some arbitral tribunals had awarded internal legal costs where a party had prepared its defence mainly through use of its own in-house counsel. That suggestion did not receive support as the last sentence of paragraph 40 sufficiently addressed that matter. Another suggestion to clearly define "in-house costs" and to make a clear distinction with other costs also did not receive support.

143. With respect to a further suggestion that the draft revised Notes should distinguish investment arbitration and deal with issues arising from such arbitration in a separate manner, the Commission recalled its decision that the Notes should keep their generic nature and that specific aspects of investment arbitration should only be dealt with separately with respect to transparency as presented in draft revised Note 6.

144. A suggestion was made to provide that when assessing the reasonableness of in-house costs, consideration should be given to the costs that would have been incurred had such services been provided by an external service provider, and that the amount recoverable should be limited thereto. That suggestion did not receive support.

145. After discussion, it was agreed that the first sentence of paragraph 40 should be revised to refer to legal representation generally. The Commission further agreed that draft revised Note 5 should highlight the importance of controlling costs as well as the need to preserve the cost-effectiveness of the arbitration process, possibly in paragraph 47.

146. With respect to paragraph 49 of the draft revised Notes, a suggestion to indicate that it would be more appropriate for decisions on costs to be made simultaneously with the final award did not receive support.

147. Subject to the modifications in paragraph 145 above, the Commission approved draft revised Note 5.

Note 8 (Interim measures)

148. In response to a question raised in connection with draft revised Note 8, it was confirmed that issues pertaining to emergency arbitrator were not dealt with despite their increasing significance, because those issues arose prior to the commencement of the arbitral proceedings and thus were outside the scope of the Notes.

149. The Commission agreed that the order of paragraphs 61 and 62 should be reversed, as paragraphs 60 and 62 dealt with interim measures in a general fashion while paragraph 61 dealt with ex parte interim measures. Subject to that modification, the Commission approved draft revised Note 8.

Note 9 (Written submissions, witness statements, expert reports and documentary evidence ("submissions"))

150. The Commission agreed that reference to the word "pleadings" should be avoided as that word was understood differently in various jurisdictions. Subject to that modification, the Commission approved draft revised Note 9.

Note 11 (Points at issue and relief or remedy sought)

151. The Commission agreed that the words "to ensure the enforceability of the arbitral award", in paragraph 71, should be replaced by the words "to ensure the enforceability of any arbitral award that might grant such relief or remedy". Subject to that modification, the Commission approved draft revised Note 11.

Note 13 (Documentary evidence)

152. The Commission agreed that wording along the following lines should be added at the end of the first sentence of paragraph 77 of the draft revised Notes: "and often as well, a statement as to why the requested documents are believed to be in the possession of the other party and are not otherwise available to the requesting party." With respect to the last sentence of paragraph 78, the Commission agreed that the words ", if necessary, may" should be replaced by the words "will often". Subject to those modifications, the Commission approved draft revised Note 13.

Note 14 (Witnesses of fact)

153. With respect to paragraph 92 of the draft revised Notes, a suggestion to delete the second sentence did not receive support. However, it was agreed that the words "securing the attendance of" could be replaced by the word "inviting". The Commission also agreed that paragraphs 91 and 92 would be better placed in draft revised Note 17, possibly with paragraph 125. Subject to those modifications, the Commission approved draft revised Note 14.

Note 17 (Hearings)

154. With respect to paragraph 125, a suggestion was made that the order of the fourth and fifth sentences should be reversed as a decision by the tribunal not to

hear a witness would mean that the tribunal had indeed given weight to the witness statement. That suggestion did not receive support.

155. With respect to the fourth sentence of paragraph 125, the Commission agreed that the words "while this may raise concerns about the requesting party's opportunity to present its case" should be replaced by the words "if the arbitral tribunal deems the proposed testimony, for example, immaterial or purely cumulative, having regard to the requesting party's reasonable opportunity to present to its case." It was further agreed that this should not only apply to cross-examination but also to direct examination. Subject to that modification, the Commission approved draft revised Note 17.

Note 19 (Joinder and consolidation)

156. With respect to paragraph 140 of the draft revised Notes, it was agreed that the fourth sentence could be expanded to refer to the relevance of the new party to be joined as well as to the negative impact that joinder could have on the proceedings including possible delays. Subject to that modification, the Commission approved draft revised Note 19.

3. Approval of the draft revised Notes

157. Upon completion of its deliberation, the Commission approved the draft revised Notes and requested the Secretariat to prepare a final version in accordance with the deliberations and decisions (see section 2 above).

158. At its 1037th meeting on 7 July, the Commission adopted the following decision:

"*The United Nations Commission on International Trade Law*,

"*Recalling* General Assembly resolution 2205 (XXI) of 17 December 1966, which established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

"*Reaffirming* the value and increased use of arbitration as a method of settling disputes,

"*Recognizing* the need for revising the UNCITRAL Notes on Organizing Arbitral Proceedings,[27] initially adopted in 1996, to conform to current arbitral practices,

"*Noting* that the purpose of the UNCITRAL Notes on Organizing Arbitral Proceedings is to list and briefly describe matters relevant to the organization of arbitral proceedings and that the Notes, prepared with a focus on international arbitration, are intended to be used in a general and universal manner, regardless whether the arbitration is administered by an arbitral institution,

[27] *UNCITRAL Yearbook*, vol. XXVII: 1996, part three, annex II.

"*Noting* that the UNCITRAL Notes on Organizing Arbitral Proceedings do not seek to promote any practice as best practice given that procedural styles and practices in arbitration do vary and that each of them has its own merit,

"*Noting further* that the revision of the UNCITRAL Notes on Organizing Arbitral Proceedings benefited greatly from consultations with Governments, interested intergovernmental and international non-governmental organizations active in the field of arbitration, including arbitral institutions, as well as individual experts,

"1. *Adopts* the 2016 UNCITRAL Notes on Organizing Arbitral Proceedings consisting of the text contained in document A/CN.9/879, with amendments adopted by the Commission at its forty-ninth session, and authorizes the Secretariat to edit and finalize the text of the Notes pursuant to the deliberations of the Commission at that session;

"2. *Recommends* the use of the Notes including by parties to arbitration, arbitral tribunals, arbitral institutions as well as for academic and training purposes with respect to international commercial dispute settlement;

"3. *Requests* the Secretary-General to publish the 2016 UNCITRAL Notes on Organizing Arbitral Proceedings, including electronically, and in the six official languages of the United Nations, and to make all efforts to ensure that the Notes become generally known and available."

4. Promotion of the 2016 UNCITRAL Notes on Organizing Arbitral Proceedings

159. The Commission had before it a proposal by ASA with the aim of cooperating with UNCITRAL in promoting the 2016 UNCITRAL Notes on Organizing Arbitral Proceedings through the development of an online arbitration toolbox (referred to below as the "Toolbox") for users of arbitration (A/CN.9/893). The Commission heard an oral presentation by the president of ASA providing a brief introduction of the Toolbox, which addressed practical issues in commercial arbitration, highlighting the flexible nature of the arbitration proceeding and taking into account the diverse approaches. It was stated that the Toolbox could provide a useful platform for training purposes, which could support the technical assistance and capacity-building activities of UNCITRAL. It was explained that the Toolbox project would be funded entirely by ASA requiring no allocation of resources of UNCITRAL and that the Toolbox would not aim at revisiting issues in the 2016 UNCITRAL Notes on Organizing Arbitral Proceedings but rather complement them. While it was mentioned that a possible form of cooperation could be establishing a joint website presenting the Toolbox, it was clarified that at this stage, ASA would not be seeking the Commission's endorsement of the contents of the Toolbox, which was still being prepared. In concluding, the president of ASA sought the Commission's preliminary support for the project and suggested that the Secretariat be given the mandate to seek possible cooperation on the Toolbox project.

160. After discussion, the Commission expressed its appreciation to ASA for its efforts in preparing a very timely and useful tool, which would be available free of charge, for promotion of the 2016 UNCITRAL Notes on Organizing Arbitral Proceedings and arbitration in general. The Secretariat was requested to seek cooperation with ASA, and to report to the Commission, at its next session, on the concrete form of such cooperation, including the possible reliance on outside

experts. It was agreed that, if the Commission were eventually requested to endorse the Toolbox, its content would have to be considered by the Commission.

161. In the course of the deliberation, a general view was expressed that caution should be exercised in choosing organizations with which the Commission or the Secretariat would seek cooperation, and that, in that respect, objective criteria might need to be established. The vigilance of the Secretariat in making rigorous selections aimed at preserving neutrality and encompassing as many organizations as possible was acknowledged.

B. Progress report of Working Group II

162. The Commission recalled that, at its forty-seventh session, in 2014, it had agreed that the Working Group should consider at its sixty-second session the issue of enforcement of international settlement agreements resulting from conciliation proceedings and should report to the Commission on the feasibility and possible form of work in that area.[28] At that session, the Commission had also invited delegations to provide information to the Secretariat in respect of that subject matter.[29]

163. The Commission also recalled that at its forty-eighth session, in 2015, it had before it a compilation of responses received by the Secretariat (A/CN.9/846 and addenda).[30] At that session, it had agreed that the Working Group should commence work at its sixty-third session on the topic of enforcement of settlement agreements to identify relevant issues and develop possible solutions, including the preparation of a convention, model provisions or guidance texts. The Commission had also agreed that the mandate of the Working Group with respect to that topic should be broad to take into account the various approaches and concerns.[31]

164. At the current session, the Commission considered the reports of the Working Group on the work of its sixty-third session (A/CN.9/861), held in Vienna from 7 to 11 September 2015, and sixty-fourth session (A/CN.9/867), held in New York from 1 to 5 February 2016. The Commission was informed that the Working Group, at its sixty-fourth session, requested the Secretariat to prepare a document outlining the issues considered at the session and setting out draft provisions without prejudice to the final form of the instrument, grouping provisions into broad categories (A/CN.9/867, para. 15).

165. After discussion, the Commission commended the Working Group for its work on the preparation of an instrument dealing with enforcement of international commercial settlement agreements resulting from conciliation and confirmed that the Working Group should continue its work on the topic. Having reaffirmed the mandate, the Commission requested the Secretariat to reflect that decision in its publications programme and take any other measures to ensure future publication of

[28] *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 129.

[29] Ibid.

[30] Ibid., *Seventieth Session, Supplement No. 17* (A/70/17), para. 135.

[31] Ibid., para. 142.

any final text resulting from that work, including electronically and in the six official languages of the United Nations.

C. Establishment and functioning of the transparency repository

166. The Commission recalled that, under article 8 of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration[32] (the "Transparency Rules" or "Rules"), the repository of published information under the Rules (the "transparency repository") had to be established.

167. The Commission further recalled that, at its forty-sixth session, in 2013, it expressed its strong and unanimous opinion that the Secretariat should fulfil the role of the transparency repository.[33] The Commission also recalled that, at its forty-seventh session, in 2014, the Secretariat had reported on steps taken in respect of the repository function to be performed, including the preparation of a dedicated web page (www.uncitral.org/transparency-registry).[34]

168. The Commission further recalled that, at its forty-eighth session, in 2015, it had reiterated its strong and unanimous opinion that the secretariat of the Commission should fulfil the role of the transparency repository and that it should establish and operate the transparency repository, initially as a pilot project.[35] The General Assembly, in its resolution 70/115 of 14 December 2015, noted with approval "the view of the Commission that the repository of published information under the Rules on Transparency in Treaty-based Investor-State Arbitration[36] should be fully operational as soon as possible, as the repository constituted a central feature both of the Rules on Transparency and of the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (Mauritius Convention on Transparency) by providing a consolidated, transparent and easily accessible global case record database for all investor-State arbitrations conducted pursuant to the Rules on Transparency and the Convention. In this regard, the General Assembly "requested the Secretary-General to establish and operate through the secretariat of the Commission the repository of published information under the Rules on Transparency, in accordance with article 8 of the Rules, initially as a pilot project until the end of 2016, to be funded entirely by voluntary contributions".[37]

169. With respect to the budget situation, the Commission was informed that in early 2016, the Secretariat had received a grant from the Fund for International Development (OFID) of the Organization of the Petroleum Exporting Countries (OPEC) in the amount of 125,000 USD and funding by the European Union in the amount of 100,000 Euro, which allowed the secretariat of the Commission to operate the project on a temporary basis until end of 2016 and beyond. The Commission expressed its appreciation to both the European Union and OFID for their contributions.

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[32] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), annex I.
[33] Ibid., para. 80.
[34] Ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 108.
[35] Ibid., *Seventieth session, Supplement No. 17* (A/70/17), para. 161.
[36] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), annex I.
[37] General Assembly resolution 70/115 of 14 December 2015, para. 2.

170. The Commission noted with satisfaction that a legal officer had been hired in April 2016 to operate the transparency repository. Further, the Commission noted that, since its forty-eighth session, in 2015, information on two additional cases had been made available on the transparency repository where the Rules applied under article 1(2)(a) by agreement of the parties to the disputes, in arbitration arising under the ICSID Rules in one case, and under the UNCITRAL Arbitration Rules administered by the Permanent Court of Arbitration in the other case. Further, the Commission noted that the Secretariat had received an increasing number of inquiries on the Transparency Rules and performed a steadily increasing number of capacity-building activities on the UNCITRAL standards on transparency in treaty-based investor-State arbitration.

171. The Commission was informed that the Secretariat was currently in contact with the European Union and OFID to possibly obtain renewed funding. More generally, the Commission reiterated its appeal to all States, international organizations and other interested entities to consider making contributions to the funding of the transparency repository, preferably in the form of multi-year contributions, so as to facilitate its continued operation.

172. The Commission was informed that the Secretariat would be able to continue operating the transparency repository until the end of 2017 with the funds remaining from the contribution received from the European Union and OFID in early 2016 and taking into account possible new commitments.

173. After discussion, the Commission reiterated its strong and unanimous opinion that the secretariat of the Commission should fulfil the role of the transparency repository and that it should continue to operate the transparency repository. Accordingly, the Commission recommended to the General Assembly that it request the secretariat of the Commission to continue operating the repository of published information in accordance with article 8 of the Transparency Rules, as a pilot project until the end of 2017, to be funded entirely by voluntary contributions. The Commission also requested that the Commission and the General Assembly be informed of developments regarding the funding and budgetary situation of the transparency repository based on its pilot operation.

D. Possible future work in the area of arbitration and conciliation

174. The Commission held a preliminary discussion regarding future work in the area of international arbitration and conciliation. The conclusions reached during that preliminary discussion were reaffirmed by the Commission upon its consideration of agenda item 16 (Work programme of the Commission) (see chapter XV below).

1. Concurrent proceedings

175. On the issue of concurrent proceedings, the Commission recalled that, at its forty-seventh session, in 2014, it had agreed that the Secretariat should explore the matter further and that work should focus on treaty-based investor-State arbitration, without disregarding the issue in the context of international commercial

arbitration.[38] The Commission further recalled that, at its forty-eighth session, in 2015, it had considered a note by the Secretariat in relation to concurrent proceedings in investment arbitration, which outlined the practical issues, the variety of situations that led to concurrent proceedings, the various options available to address those issues, and the possible form of any instrument to be developed in that area (A/CN.9/848).[39] There was general support for retaining the topic of concurrent proceedings on the agenda of the Commission. Accordingly, it was suggested that the Secretariat should keep abreast of developments in that area, provide further analysis and set out the issues and possible solutions in a neutral manner, which would assist the Commission making an informed decision at a later stage. It was suggested that work should also take into consideration concurrent proceedings in international commercial arbitration. At that session, the Commission requested the Secretariat to explore the topic further, in close cooperation with experts including those from other organizations working actively in that area and to report to the Commission at a future session with a detailed analysis of the topic including possible work that could be carried out.[40]

176. In accordance with that request, the Commission, at the current session, had before it a note by the Secretariat in relation to concurrent proceedings in international arbitration (A/CN.9/881). The Commission expressed its appreciation to the Secretariat for the note, which outlined the causes and impact of concurrent proceedings, existing principles and mechanisms to address concurrent proceedings and possible future work in that area.

177. A view was expressed that there was not much merit in retaining the topic of concurrent proceedings on the future work agenda of the Commission and that it would be preferable to utilize resources on other topics. In support of that view, it was stated that concurrent proceedings were rare and sporadic, and that any guidance provided to arbitral tribunals on the topic would be incomplete, as it would be limited to instances where the UNCITRAL Arbitral Rules were applicable. It was also mentioned that there were already existing mechanisms in investment treaties in which States could seek guidance. It was mentioned that, while the Commission might choose to address concurrent proceedings at a later stage, the topic did not warrant further work by the Secretariat at the current stage.

178. Nonetheless, there was general support that the topic of concurrent proceedings, despite the challenges posed, should be kept on the future work agenda of the Commission. It was mentioned that the note by the Secretariat clearly set out the issues that need to be addressed and exemplified that the existing legal framework and relevant rules did not address such circumstances. It was emphasized that concurrent proceedings posed a genuine problem and was of great significance as it could be harmful, particular to developing States, faced with such proceedings.

179. On the possible form of work, as discussed in section IV of document A/CN.9/881, support was expressed for providing guidance to arbitral tribunals faced with concurrent proceedings. It was suggested that such work could

[38] *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 130.

[39] Ibid., *Seventieth Session, Supplement No. 17* (A/70/17), para. 144.

[40] Ibid., paras. 145-147.

address how an arbitral tribunal should deal with concurrent proceedings and avoid contradictory decisions, possibly utilizing its inherent power provided in article 17 of the UNCITRAL Arbitration Rules and similar provisions in other arbitration rules. Support was also expressed for providing prudent guidance to States that might be faced with concurrent proceedings or wanted to avoid them. It was suggested that concrete examples of existing mechanisms or provisions in investment treaties and possible models to be followed could be provided, supplementing the work already done by other organizations. However, some doubts were expressed about the possible preparation of a multilateral instrument to address concurrent proceedings.

180. As to whether the possible work should focus on investment and/or commercial arbitration, it was suggested that a distinction should be made if work were to be undertaken. It was generally felt that there was a more pressing need for work to focus on concurrent proceedings in investment arbitration. It was also mentioned that concurrent proceeding in commercial arbitration deserved a similar level of attention. In addition, it was suggested that possible work on the topic should also address successive proceedings, thus encompassing the full range of instances comprising multiple proceedings.

181. After discussion, the Commission agreed that the Secretariat should continue to explore the topic and further develop possible work that could be undertaken with regard to concurrent proceedings as mentioned in section IV of document A/CN.9/881, for consideration by the Commission at a future session.

2. Code of ethics/conduct for arbitrators

182. The Commission recalled that, at its forty-eighth session, in 2015, it had before it a proposal for future work on a code of ethics for arbitrators in investment arbitration (A/CN.9/855), which suggested that work on the topic could relate to conduct of arbitrators, their relationship with those involved in the arbitration process, and the values that they were expected to share and convey. It was further recalled that the Commission requested the Secretariat to explore the topic in a broad manner, including in the field of both commercial and investment arbitration, taking into account existing laws, rules and regulations as well as any standards established by other organizations. The Secretariat was requested to assess the feasibility of work in that area and report to the Commission at a future session.[41]

183. Pursuant to that request, the Commission had before it a note by the Secretariat in relation to ethics in international arbitration (A/CN.9/880). The Commission expressed its appreciation to the Secretariat for the note, which outlined the concept of ethics in international arbitration as well as existing legal frameworks on ethics and posed some questions to be considered before possibly engaging in future work in that area.

184. In support of retaining the topic of code of ethics on the future work agenda, it was said that there was currently a wide diversity and multiple layers of ethical norms and standards, and that therefore, it would be useful for the Commission to undertake work on the topic. It was underlined that different ethical norms and standards were applicable, and there were currently no clear criteria for determining

[41] Ibid., paras. 148-151.

how they interacted or which should prevail in a given situation. It was suggested that future work on the topic could take various approaches including (a) substantive work on harmonizing such norms or establishing minimum standards, yet taking into account considerations of cultural diversity, and (b) how to address the inter-relationship of multiple layers of norms and standards and providing guidance on which ethical standards would apply. In that respect, a question was raised regarding the scope of work, namely whether such work should focus on a code of ethics that applied to arbitrators only, or that also applied to other participants in the arbitration process, such as counsel and experts. In response, reservations were expressed regarding possible extension of the work to counsel and experts, as different sets of rules on ethics would usually be applicable, such as those governing the bar. It was further mentioned that issues relating to conflicts of interest of arbitrators could usefully be further elaborated.

185. Views were also expressed that the wide array of existing norms and standards on ethics would make it superfluous for the Commission to undertake work on the topic. It was said that notions such as independence and impartiality were already embedded in most domestic arbitration laws, arbitration rules, and institutions' codes of ethics. It was further pointed that in the field of treaty-based investor-State arbitration, codes of ethics were being developed as part of, or as an annex to, investment treaties and, therefore, the timeliness of undertaking work in that field was questioned.

186. After discussion, the Commission requested the Secretariat to continue exploring the topic further, in close cooperation with experts including those from other organizations working actively in that area, and to report to the Commission at a future session on the various possible approaches as outlined above.

3. Possible work on reform of investor-State dispute settlement system

187. The Commission recalled that at its forty-eighth session, in 2015, it had been informed that the Secretariat was conducting a study on whether the Mauritius Convention on Transparency could provide a useful model for possible reforms in the field of investor-State arbitration, in conjunction with the Center for International Dispute Settlement (CIDS) of the University of Geneva and the Graduate Institute of International and Development Studies. The Secretariat was requested to report to the Commission at a future session with an update on that matter.[42]

188. In accordance with that request, the Commission had before it a note providing an update on the study conducted within the framework of a research project of CIDS and a short overview of its outcome (A/CN.9/890). The Commission expressed its appreciation to the Secretariat and to CIDS for the research conducted. In particular, the Commission expressed its appreciation to Gabrielle Kaufmann-Kohler and Michele Potestà for the thorough analysis of the topic.

189. The Commission heard an oral presentation of the CIDS research study, which sought to provide a preliminary analysis of the issues that would need to be considered if a reform of the investor-State dispute settlement system were to be pursued at a multilateral level. It was explained that the research study analysed

[42] Ibid., para. 268.

whether the Mauritius Convention on Transparency could serve as a model for further reforms, and sought to map the main options available in reforming investor-State dispute settlement. It was further explained that the research study borrowed from existing experience with various international courts and tribunals, including inter-state dispute settlement bodies (such as the International Court of Justice and the World Trade Organization (WTO)) as well as other dispute settlement mechanisms, such as the Iran-United States Claims Tribunal and regional courts. It was pointed out that two scenarios were considered in depth in the research study: the design of a permanent investment tribunal and of an appeal mechanism. It was further explained that the final part of the research study addressed how States might extend the proposed new dispute settlement system to their existing and future investment treaties. The research study suggested that, although not the only model that could be envisaged for those purposes, an opt-in convention modelled on the Mauritius Convention on Transparency with certain adaptations could effectively extend new dispute settlement options to existing investment treaties. However, it was pointed out that such a convention would raise treaty law issues, which the research study discussed.

190. Support was expressed for including the topic of reforms of the investor-State dispute settlement system in the future work agenda of the Commission. It was said that criticism had developed towards investor-State arbitration in general, which included the alleged lack of impartiality and accountability of the arbitrators, the lack of transparency of the procedure, and the absence of consistency of the jurisprudence, all of which had triggered a growing demand for changes from a number of States, international organizations and civil society groups. It was further said that reforms had been undertaken to address those criticisms, and it would therefore be timely to consider the matter at a multilateral level to avoid the development of a fragmented system.

191. It was suggested that the Commission would constitute an appropriate forum for considering and possibly coordinating work on the matter, because of its universal composition, and of its experience in the field of international dispute settlement. Some delegations also stated that the Commission should not do further work on investor-State arbitration as that topic was already being adequately addressed elsewhere. However, it was underlined that, if the Commission were to play such a role, close coordination and cooperation would be required with States and other stakeholders already involved in that matter.

192. Another view was that it would be difficult to define the scope of such work and that as currently presented, it might be too ambitious a project for the Commission to embark on. Therefore, it was suggested that preference be given to work relating to commercial arbitration.

193. In response to a concern that the Commission would not be an appropriate institution to host or to establish an investment court, it was said that the envisaged role of the Commission would be to lead the process of designing a new dispute settlement system, without necessarily hosting it.

194. After discussion, the Commission requested the Secretariat to review how the project described in document A/CN.9/890 might be best carried forward, if approved as a topic of future work at the forthcoming session of the Commission, taking into consideration the views of all States and other stakeholders, including

how this project might interact with other initiatives in this area and which format and processes should be used. In so doing, the Secretariat was requested to conduct broad consultations.

4. Conclusion

195. After deliberation of the three possible topics for future work (see paras. 175-194 above), the Commission decided to retain those topics on its agenda for further consideration at its next session. It further requested that the Secretariat, within its existing resources, continue to update and conduct preparatory work on all the topics so that the Commission would be in a position to make an informed decision whether to mandate its Working Group II to undertake work in any of the topics, following the current work on the enforcement of settlement agreements resulting from conciliation. In that context, it was reaffirmed that priority should be given to the current work by Working Group II so that it could expeditiously complete its work on the preparation of an instrument on the topic.

E. Secretariat Guide on the New York Convention

196. The Commission recalled its discussion at its forty-seventh session, in 2014, regarding the preparation of a guide ("New York Convention Guide") on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958[43] (the New York Convention).[44]

197. The Commission was informed that the New York Convention Guide had been finalized and published on the website (www.newyorkconvention1958.org) which was set up to make the information gathered in preparation of the New York Convention Guide publicly available. The Commission also heard an oral report on the developments on the website since the last Commission session.

198. The Commission expressed its appreciation for the completion of the New York Convention Guide and the work done by the Secretariat as well as the experts, E. Gaillard (Sciences Po Paris, École de Droit) and G. Bermann (Columbia University School of Law), including their research teams.

F. International commercial arbitration and mediation moot competitions

1. Willem C. Vis International Commercial Arbitration Moot

199. It was noted that the Association for the Organization and Promotion of the Willem C. Vis International Commercial Arbitration Moot had organized the Twenty-third Moot, the oral arguments phase of which had taken place in Vienna from 18 to 24 March 2016. As in previous years, the Moot had been co-sponsored by the Commission. Legal issues addressed by the teams in the Twenty-third Moot were based on the United Nations Convention on Contracts for the International

[43] United Nations, *Treaty Series*, vol. 330, No. 4739.

[44] *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17* (A/69/17), paras. 111-117.

Sale of Goods (Vienna, 1980)[45] (the "United Nations Sales Convention"). A total of 311 teams from 67 countries participated and the best team in oral arguments was the University of Buenos Aires (Argentina). The oral arguments phase of the Twenty-fourth Willem C. Vis International Commercial Arbitration Moot would be held in Vienna from 7 to 13 April 2017.

200. It was also noted that the Vis East Moot Foundation had organized the Thirteenth Willem C. Vis (East) International Commercial Arbitration Moot, which had been co-sponsored by the Commission, the East Asia Branch of the Chartered Institute of Arbitrators and many law firms based in Hong Kong, China. The final phase took place in Hong Kong, China, from 6 to 13 March 2016. A total of 115 teams from 29 jurisdictions participated in the Thirteenth (East) Moot and the best team in oral arguments was Singapore Management University (Singapore). The Fourteenth (East) Moot would be held in Hong Kong, China, from 26 March to 2 April 2017.

2. Madrid Commercial Arbitration Moot 2016

201. It was noted that Carlos III University of Madrid had organized the Eighth International Commercial Arbitration Competition in Madrid from 25 to 29 April 2016, which had been co-sponsored by the Commission. Legal issues addressed by the teams related to an international sale of goods, where the United Nations Sales Convention, the New York Convention, and the Rules of Arbitration of the Madrid Court of Arbitration were applicable. A total of 24 teams from 11 jurisdictions participated in the Madrid Moot 2016, which was held in Spanish. The best team in oral arguments was Universidad Peruana de Ciencias Aplicadas (Peru). The Ninth Madrid Moot would be held from 3 to 7 April 2017.

3. Mediation and negotiation competition

202. It was noted that the second mediation and negotiation competition organized jointly by IBA and the Vienna International Arbitral Centre with the support of the Commission had taken place in Vienna from 28 June to 2 July 2016. Legal issues addressed by the teams had been those addressed at the Twenty-third Willem C. Vis International Commercial Arbitration Moot (see para. 199 above). A total of 30 teams from 17 jurisdictions had participated.

V. Consideration of issues in the area of online dispute resolution: finalization and adoption of Technical Notes on Online Dispute Resolution

203. The Commission recalled its instruction to Working Group III (Online Dispute Resolution), made at its forty-eighth session, in 2015, to continue its work towards elaborating a non-binding descriptive document reflecting elements of an online dispute resolution (ODR) process, on which elements the Working Group had previously reached consensus, excluding the question of the nature of the final stage of the ODR process (arbitration/non-arbitration). It was also recalled that the

[45] United Nations, *Treaty Series*, vol. 1489, No. 25567.

Working Group had been given a time limit of one year or no more than two Working Group sessions to conclude its work.[46]

204. The Commission took note of the progress of the Working Group, reflected in its reports to the Commission from the two sessions since the instructions referred to above (A/CN.9/862 and A/CN.9/868). The Commission noted that the Working Group had completed its deliberations and submitted a draft document entitled "Technical Notes on Online Dispute Resolution" for the Commission's consideration and eventual adoption at the current session (A/CN.9/868, para. 87).

205. The Commission also heard that the concerns about ensuring language consistency in accurately reflecting the descriptive nature of the text in its title in certain official languages had been satisfactorily addressed (A/CN.9/868, paras. 79-81).

206. The Commission proceeded with the consideration of draft technical notes on online dispute resolution contained in document A/CN.9/888 (the draft Technical Notes). The Commission heard a proposal for an additional paragraph to be included in the draft Technical Notes to read as follows, "These Technical Notes are not intended to supplant or override applicable law", the purpose of which would be to facilitate a correct understanding of the nature of the Technical Notes and so to support their implementation.

207. In response, it was stated that the draft Technical Notes were expressly descriptive in nature, and so they could not override applicable law. In addition, it was observed that the suggested addition was unnecessary and could add confusion.

208. Confirming its understanding that the Technical Notes did not supplant or override applicable law, the Commission decided to leave the text as proposed in document A/CN.9/888.

209. The Commission then heard the following proposals to amend the draft Technical Notes which, it was suggested, would remove a contradiction between paragraph 34 on the one hand and paragraphs 19 and 33 on the other hand in the draft Technical Notes regarding the commencement of ODR proceedings:

(a) To rephrase paragraph 19 as follows: "When a claimant submits a notice through the ODR platform to the ODR administrator (see section VI below), ..."; and

(b) To amend the opening phrase of paragraph 33 to read "In order that an ODR proceeding may begin".

210. An alternative proposal was that no changes should be made to paragraphs 19 and 33, and the phrase after the comma in paragraph 34 should be deleted. Paragraph 34 could consequentially be amended to read "ODR proceedings may be deemed to have commenced when the claimant communicates a notice to the ODR administrator. It is desirable that the ODR administrator notify the parties that the notice is available at the ODR platform within a reasonable time." It was said that that view better reflected that both paragraphs 19 and 34 reflect consensus regarding how commencement should be measured; however, as there was a conflict in the

[46] *Official Records of the General Assembly, Seventieth Session, Supplement No. 17* (A/70/17), para. 352.

approach taken in the two paragraphs, the approach taken in paragraph 19 was preferable because it was more efficient.

211. In response, it was stated that the existing paragraph 34 expressed the consensus in the Working Group that the proceedings "may be deemed to have commenced when, following a claimant's communication of a notice to the ODR administrator, the ODR administrator notifies the parties that the notice is available at the ODR platform."

212. After discussion, it was agreed that the amendments proposed to paragraphs 19 and 33 would be made. It was also confirmed that paragraph 34 would remain unchanged.

213. The Commission also agreed the following amendments to the draft Technical Notes:

(a) To delete the word "claimant's" from the phrase "the claimant's notice" in paragraphs 36 and 51; and

(b) To add the following phrase after the word "neutral" at the end of paragraph 42: "as described in paragraph 46 below".

214. A proposal to add the following sentence to paragraph 51, "The ODR administrator may utilize technical means to accommodate this selection", did not gain support.

215. The Commission also considered paragraph 53 of the draft Technical Notes, and agreed that the following formulation would more accurately reflect the intention of the Working Group (A/CN.9/868, paras. 74-75): "It is desirable that ODR proceedings be subject to the same confidentiality and due process standards that apply to dispute resolution proceedings in an offline context, in particular independence, neutrality and impartiality". It was decided that paragraph 53 of the draft Technical Notes would be amended accordingly.

216. The Commission approved the draft Technical Notes subject to the amendments agreed to be made at the current session.

217. The Commission, after consideration of the draft Technical Notes, adopted the following decision at its 1035th meeting, on 5 July 2016:

"*The United Nations Commission on International Trade Law*,

"*Recalling* its mandate under General Assembly resolution 2205 (XXI) of 17 December 1966 to further the progressive harmonization and unification of the law of international trade, and in that respect to bear in mind the interests of all peoples, and in particular those of developing countries, in the extensive development of international trade,

"*Noting* that the sharp increase of online cross-border transactions has raised a need for mechanisms for resolving disputes which arise from such transactions, and that one such mechanism is online dispute resolution ("ODR"),

"*Observing* that ODR can assist the parties in resolving the dispute in a simple, fast, flexible and secure manner, without the need for physical presence at a meeting or hearing,

"*Also observing* that ODR represents significant opportunities for access to dispute resolution by buyers and sellers concluding cross-border commercial transactions, both in developed and developing countries,

"*Recalling* that at its forty-third session, in 2010, the Commission agreed that a working group should be established to undertake work in the field of ODR,[47]

"*Expressing appreciation* to Working Group III (Online Dispute Resolution) for having prepared the draft Technical Notes on Online Dispute Resolution,

"*Noting further* that the Technical Notes on Online Dispute Resolution are non-binding, descriptive, and reflect principles of impartiality, independence, efficiency, effectiveness, due process, fairness, accountability and transparency,

"*Noting additionally* that the Technical Notes on Online Dispute Resolution are expected to contribute significantly to the development of systems to enable the settlement of disputes arising from cross-border low-value sales or service contracts concluded using electronic communications,

"*Being convinced* that the Technical Notes on Online Dispute Resolution will significantly assist all States, in particular developing countries and States whose economies are in transition, ODR administrators, ODR platforms, neutrals, and the parties to ODR proceedings in developing and using ODR systems,

"1. *Adopts* the Technical Notes on Online Dispute Resolution, as they appear in annex I to the report of UNCITRAL on its forty-ninth session;

"2. *Requests* the Secretary-General to publish the text of the Technical Notes on Online Dispute Resolution, including electronically, in the six official languages of the United Nations, and to disseminate that text broadly, including through electronic means, to Governments and other interested bodies;

"3. *Recommends* that all States and other stakeholders use the Technical Notes on Online Dispute Resolution in designing and implementing ODR systems for cross-border commercial transactions; and

"4. *Requests* all States to support the promotion and use of the Technical Notes on Online Dispute Resolution."

218. It was suggested that the Technical Notes could be endorsed by means of a dedicated draft resolution, which could be introduced to the General Assembly. The Secretariat was requested to bear this suggestion in mind when assisting States with the preparation of submissions to the Sixth Committee later in 2016.

VI. Micro-, small- and medium-sized enterprises: progress report of Working Group I

219. The Commission had before it the reports of Working Group I (MSMEs) on the work of its twenty-fifth and twenty-sixty sessions (A/CN.9/860 and A/CN.9/866, respectively) outlining progress on the two topics on its current work agenda, both of which "aimed at reducing the legal obstacles faced by micro, small and

[47] Ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 257.

medium-sized enterprises throughout their life cycle and, in particular, those in developing economies":[48]

(a) Key principles in business registration; and

(b) Legal questions surrounding the creation of a simplified business entity.

220. With respect to the work on key principles in business registration, the Commission noted that the Working Group had considered texts prepared by the Secretariat in the form of draft commentary and draft recommendations for a possible legislative guide. The Commission further noted that on the basis of those draft texts, the Working Group had decided to prepare an instrument along the lines of a concise legislative guide, without prejudice to considering at a later time whether draft provisions or a model law might also be appropriate (A/CN.9/860, para. 73), and that the twenty-eighth session of the Working Group would be devoted in its entirety to consideration of a draft legislative guide on business registration to be prepared by the Secretariat (A/CN.9/866, para. 90).

221. On the second topic of the legal issues surrounding the creation of a simplified business entity, the Commission recalled that the Working Group had proceeded to examine those issues as illustrated by way of working papers and through the text of draft model laws. The Commission noted that at the conclusion of its examination of those issues at its twenty-sixth session, the Working Group decided that a legislative guide reflecting its policy considerations to date and consisting of recommendations and commentary should be prepared for further discussion in the Working Group (A/CN.9/866, paras. 48 to 50). The Commission further noted the Working Group's decision that its twenty-seventh session would be devoted in its entirety to consideration of a draft legislative guide on a simplified business entity (A/CN.9/866, para. 90).

222. The Commission noted that the Working Group had also considered how best to provide an overall context for end-users of current and possible future texts relating to MSMEs. The Working Group was of the view that an introductory document along the lines of A/CN.9/WG.I/WP.92 should preface the two legislative texts currently under preparation, and that such a text could also provide a link for possible future texts relating to MSMEs but that might, for example, be prepared by other Working Groups (A/CN.9/866, paras. 86 to 87).

223. It was observed that although work on the two topics being tackled by the Working Group aimed at reducing the legal obstacles faced by MSMEs, the issues addressed by the Working Group were of the general nature and not specific to MSMEs. Consideration could thus be given to whether the description of the Working Group as a working group on MSMEs reflected correctly the nature of its work. Reference was also made to work being pursued by the European

[48] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 321; reiterated ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 134; and ibid., *Seventieth Session, Supplement No. 17* (A/70/17), paras. 220, 225, and 340.

Commission on the topic of single member private limited companies,[49] along with a request that the Secretariat continue to liaise with the secretariat of the European Commission in that regard. A view was also expressed that completion of the current work programme of the Working Group was urgent, and that other topics in relation to MSMEs might be pursued, possibly in coordination with other Working Groups. It was further noted with satisfaction that the Working Group had expressly allotted time at its next session to consider a legal business form that had proven successful in a State (A/CN.9/866, para. 90), and that the Working Group had tentatively agreed at an earlier session to include a discussion in its further work of alternative legislative models for micro and small businesses that provided for the segregation of business assets from personal assets without requiring the creation of an entity with legal personality (A/CN.9/831, para. 20).

224. After discussion, the Commission commended the Working Group for the progress that was being made on the two topics as reported above, and States were encouraged to ensure that their delegations included experts on business registration so as to facilitate work on that topic. It noted that, consistent with the principles contained in General Assembly resolutions on the work of UNCITRAL,[50] the legislative texts resulting from the current work of the Working Group on those two topics should be published, including electronically, and in the six official languages of the United Nations, and be disseminated broadly to Governments and other interested bodies.

VII. Consideration of issues in the area of electronic commerce

A. Progress report of Working Group IV

225. The Commission recalled that at its forty-fourth session, in 2011, it had mandated Working Group IV (Electronic Commerce) to undertake work in the field of electronic transferable records[51] and that the work had progressed in the preparation of a draft Model Law on Electronic Transferable Records.[52]

226. At its current session, the Commission had before it reports of the Working Group on its fifty-second session (A/CN.9/863), held in Vienna from 9 to 13 November 2015, and fifty-third session (A/CN.9/869), held in New York from 9 to 13 May 2016. It was noted that the draft Model Law on Electronic Transferable Records focused on domestic aspects of the use of electronic transferable records equivalent to paper-based transferable documents or instruments, and that international aspects of the use of those records, as well as the use of transferable

[49] See a Proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies, European Commission, Brussels, 9.4.2014 (COM (2014) 212 final). The European Commission had previously considered the Proposal for a Council Regulation on the Statute for a European private company (COM (2008) 396)), but that proposal was officially withdrawn (Annex to the Communication on "Regulatory Fitness and Performance (REFIT): Results and Next Steps", COM (2013) 685, 2.10.2013).

[50] E.g. General Assembly resolution 70/115, paras. 16, 19 and 21.

[51] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 238.

[52] Ibid., *Seventieth Session, Supplement No. 17* (A/70/17), para. 228.

records existing only in electronic form, would be addressed at a later stage.[53] The Commission was informed that, given the advanced stage of preparation, it was expected that the draft Model Law with an explanatory note would be submitted for adoption at its fiftieth session, in 2017.

227. The Commission expressed its appreciation to the Working Group for the progress made and commended the Secretariat for its work. The Commission requested the Secretariat to reflect in its publication programme and take any other measures to ensure future publication of the final text of the UNCITRAL Model Law on Electronic Transferable Records with an explanatory note, expected to be adopted at the Commission's fiftieth session, including electronically and in the six official languages of the United Nations, and to disseminate it broadly to Governments and other interested bodies.

B. Future work in the area of electronic commerce

228. The Commission recalled that at its forty-eighth session, in 2015, it had instructed the Secretariat to conduct preparatory work on identity management and trust services, cloud computing and mobile commerce, including through the organization of colloquia and expert group meetings, for future discussion at the Working Group level following the current work on electronic transferable records.[54]

229. Accordingly, the Commission had before it a note by the Secretariat on legal issues related to identity management and trust services (A/CN.9/891) summarising the discussions during the UNCITRAL Colloquium on Legal Issues Related to Identity Management and Trust Services held in Vienna on 21 and 22 April 2016 and complemented by other material. The Commission was also informed that work on contractual aspects of cloud computing had started at the expert level on the basis of a proposal (A/CN.9/856) submitted at the forty-eighth session of the Commission, in 2015.[55]

230. In light of such progress, it was noted that the Working Group could commence consideration of legal issues relating to the use of identity management and trust services and of cloud computing upon completion of its work on the draft Model Law on Electronic Transferable Records, in line with the decision made by the Commission at its forty-eighth session, in 2015.[56]

231. In that context, preference was expressed for work to commence on legal issues relating to cloud computing based on preparatory work already conducted. However, the view was also expressed that additional preparatory work was necessary, which should aim at compiling relevant information. In response to a question about the possible means for conducting preparatory work, the Commission was informed that the Secretariat would undertake a wide range of informal consultations with experts and related organizations, including possibly through the organization of a meeting of experts. States and other concerned entities

[53] Ibid.
[54] Ibid., para. 358.
[55] Ibid., para. 354.
[56] Ibid., para. 358.

were invited to share with the Secretariat expertise and other resources useful for that initiative with a view to ensuring regional representation.

232. Preference was also expressed for work to commence on identity management and trust services, as that topic continuously arose during the preparation of the draft Model Law on Electronic Transferable Records, was of general significance in electronic transactions, and could build on the results of the Colloquium (see para. 229 above). It was mentioned that preparatory work on that topic should involve assessment of existing legal frameworks, which might eventually lead to the identification of a specific subtopic(s), which the Working Group might focus its work. In that context, a suggestion was made that the Secretariat might consider circulating a questionnaire to seek inputs from States on the existing domestic legislative framework on identity management and trust services.

233. During the discussion, a view was expressed that the topics of "identity management" and "trust services" should be distinguished and that focus of the work should be on the former, as it was the subject of legislative efforts by a number of States. Furthermore, it was mentioned that work on trust services should be deferred until further assessment was made.

234. While comments were made that work on the identity management and trust services could touch upon or take into account issues concerning privacy in electronic communications, it was generally felt that caution should be exercised in dealing with such issues, which did not necessarily fall within the overall mandate of the Commission.

235. After discussion, it was agreed that priority should be given to completing the preparation of the draft Model Law on Electronic Transferable Records and the accompanying explanatory note, so that they could be finalized and adopted by the Commission at its next session. It was generally felt that the topics of identity management and trust services as well as of cloud computing should be retained on the work agenda and that it would be premature to prioritize between the two topics. The Commission confirmed its decision that the Working Group could take up work on those topics upon completion of the work on the Model Law on Electronic Transferable Records. In that context, the Secretariat, within its existing resources, and the Working Group were asked to continue to update and conduct preparatory work on the two topics including their feasibility in parallel and in a flexible manner and report back to the Commission so that it could make an informed decision at a future session, including the priority to be given to each topic. In that context, it was mentioned that priority should be based on practical needs rather than on how interesting the topic was or the feasibility of work.

236. Having mandated work in the fields of identity management and trust services and of cloud computing, the Commission requested the Secretariat to reflect that decision in its publications programme and take any other measures to ensure future publication of any final text resulting from that work, including electronically and in the six official languages of the United Nations.

237. During its deliberation of future work, the Commission was informed of legislative developments based on UNCITRAL texts on electronic commerce, which could provide guidance to the current and future work of Working Group IV, especially with respect to certain aspects of interoperability. In addition, the importance of technical assistance and capacity-building activities in the field of

electronic commerce was highlighted. The Secretariat was requested to make robust and tangible efforts to expand such assistance for law reforms in that field, especially for developing countries.

C. Cooperation with UN/ESCAP in the field of paperless trade

238. The Commission recalled that at its forty-fourth session, in 2011, it had welcomed the ongoing cooperation between the Secretariat and other organizations on legal issues relating to electronic single window facilities and had asked the Secretariat to contribute as appropriate.[57]

239. At the current session, the Commission was informed about ongoing work in the field of paperless trade, including legal aspects of electronic single window facilities, carried out in cooperation with the United Nations Economic and Social Commission for Asia and the Pacific (UN/ESCAP). In particular, the Commission was informed that on 19 May 2016, UN/ESCAP, during its seventy-second session, adopted the "Framework Agreement on Facilitation of Cross-Border Paperless Trade in Asia and the Pacific"[58] (the "Framework Agreement"). It was noted that the Secretariat had participated in the preparation of the Framework Agreement from an early stage to ensure consistency with the principles embodied in UNCITRAL texts on electronic commerce.

240. The Commission took note that the objective of the Framework Agreement was to promote and facilitate cross-border electronic exchange of trade data and documents in line with a set of general principles, thus bridging the gap between cross-border trade facilitation and electronic commerce. It was further explained that the Framework Agreement was intended to complement the WTO Trade Facilitation Agreement and might also facilitate the implementation and harmonization of a growing number of bilateral and multilateral cross-border paperless trade initiatives in the Asia and Pacific region, including those regarding regional and subregional single windows.

VIII. Insolvency law: progress report of Working Group V

241. The Commission had before it the reports of the Working Group on the work of its forty-eighth and forty-ninth sessions (A/CN.9/864 and A/CN.9/870, respectively) outlining progress on the three topics on its current work agenda:

(a) Facilitating the cross-border insolvency of multinational enterprise groups, pursuant to a mandate given by the Commission at its forty-third session;[59]

(b) Obligations of directors of enterprise group companies in the period approaching insolvency, pursuant to a mandate given by the Commission at its forty-third session;[60] and

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[57] Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 240.

[58] Available at www.unescap.org/resources/framework-agreement-facilitation-cross-border-paperless-trade-asia-and-pacific.

[59] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 259.

(c) Recognition and enforcement of insolvency-related judgements, pursuant to a mandate given by the Commission at its forty-seventh session.[61]

242. With respect to the work on enterprise groups, the Commission noted that the Working Group had agreed on a set of key principles to underpin its work and a structure for the draft text to be developed. A first draft text consolidating the issues addressed by the key principles with articles on cooperation and coordination, facilitating the development and recognition of a group insolvency solution, and treatment of foreign claims in accordance with applicable law had been considered, enabling a more coherent and comprehensive draft text to be prepared for consideration at a future session.

243. On the second topic of the obligations of directors of enterprise group companies in the period approaching insolvency, the Commission recalled that while the work was already well developed, it would not be referred to the Commission for finalization and approval until the work on enterprise group insolvency was sufficiently advanced to be able to ensure consistency of approach between the two texts.

244. With respect to the work on recognition and enforcement of insolvency-related judgements, the Commission noted with satisfaction the progress that had been made towards the development of a draft model law, as well as the steps that had been taken to facilitate close coordination with the Hague Conference on Private International Law, including attendance by the Secretariat at the recent Special Commission of June 2016 on the Recognition and Enforcement of Foreign Judgements. That coordination has enabled progress on the Hague Conference's judgements project to be taken into consideration in the draft model law being developed by the Working Group. The Commission noted that the Hague Conference had prepared a document on UNCITRAL's work on judgements and settlement agreements for the information of the Special Commission. Stressing the importance of ensuring coordination with the work of the Hague Conference, the Commission encouraged the Secretariat to continue its efforts in that regard.

245. After discussion, the Commission commended the Working Group for the progress that was being made on the three topics on its current work agenda, as reported above (see para. 241). The Commission requested the Secretariat to reflect, in its publications programme, the decisions to mandate work on those topics and to take any other measures necessary to ensure future publication of final texts resulting from that work, including electronically and in the six official languages of the United Nations.

246. The Commission noted that the report of the Working Group's forty-ninth session recommended the Commission clarify the mandate given at its forty-seventh session[62] to Working Group V with respect to the insolvency of MSMEs. The Commission agreed that Working Group V is mandated to develop appropriate mechanisms and solutions, focusing on both natural and legal persons engaged in commercial activity, to resolve the insolvency of MSMEs. While the key insolvency principles and the guidance provided by the UNCITRAL Legislative

[60] Ibid.

[61] Ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 155.

[62] Ibid., para. 156.

Guide on Insolvency Law[63] should be the starting point for discussions, the Working Group should aim to tailor the mechanisms already provided in the Legislative Guide to specifically address MSMEs and develop new and simplified mechanisms as required, taking into account the need for those mechanisms to be equitable, fast, flexible and cost efficient. The form the work might take should be decided at a later time based on the nature of the various solutions that were being developed. It was mentioned that the definition of what constituted an MSME would be helpful.

247. The Commission noted that the feasibility of developing a convention on international insolvency issues might continue to be studied informally by an ad hoc, open-ended group of interested participants on the basis of a list of issues prepared and distributed by the Secretariat. However, noting that the agenda of Working Group V was already rather full and that the Secretariat might have little time and few resources with which to conduct this informal work, the Commission agreed that that work should only be undertaken as and when the Secretariat was able to do so.

IX. Technical assistance to law reform

A. General discussion

248. The Commission had before it a note by the Secretariat (A/CN.9/872) describing technical cooperation and assistance activities. The Commission stressed the importance of such activities and expressed its appreciation for the related work undertaken by the Secretariat.

249. The Commission noted that the continuing ability to respond to requests from States and regional organizations for technical cooperation and assistance activities was dependent upon the availability of funds to meet associated costs. The Commission further noted that, despite efforts by the Secretariat to solicit new donations, funds available in the UNCITRAL Trust Fund for Symposia were very limited. Accordingly, requests for technical cooperation and assistance activities continued to be very carefully considered, and the number of such activities, which of late had mostly been carried out on a cost-share or no-cost basis, was limited. The Commission requested the Secretariat to continue exploring alternative sources of extrabudgetary funding, in particular by more extensively engaging permanent missions, as well as other possible partners in the public and private sectors. The Commission also encouraged the Secretariat to seek cooperation and partnership with international organizations, including through regional offices, and bilateral assistance providers in the provision of technical assistance, and appealed to all States, international organizations and other interested entities to facilitate such cooperation and take any other initiative to maximize the use of relevant UNCITRAL standards in law reform.

250. The Commission welcomed the Secretariat's efforts to expand cooperation with the Government of the Republic of Korea on the APEC Ease of Doing Business project in the area of enforcing contracts, to other areas and with other APEC

[63] United Nations publication, Sales No. E.05.V.10.

member economies. Support was expressed for the Secretariat's aim to cooperate more closely with APEC and its member economies to improve the business environment in the Asia-Pacific region and to promote UNCITRAL texts.

251. The Commission reiterated its appeal to all States, international organizations and other interested entities to consider making contributions to the UNCITRAL Trust Fund for Symposia, if possible in the form of multi-year contributions or as specific-purpose contributions, in order to facilitate planning and enable the Secretariat to meet the increasing number of requests from developing countries and countries with economies in transition for technical cooperation and assistance activities. The Commission expressed its appreciation to the Governments of the Republic of Korea, and Indonesia for their contributions to the Trust Fund since the Commission's forty-eighth session and to organizations that had contributed to the programme by providing funds or by hosting seminars.

252. The Commission appealed to the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the trust fund established to provide travel assistance to developing countries that were members of the Commission. The Commission expressed its appreciation to the Government of Austria for contributing to the UNCITRAL Trust Fund since the Commission's forty-eighth session, thereby enabling travel assistance to be granted to developing countries that were members of UNCITRAL.

253. With regard to the dissemination of information on UNCITRAL's work and texts, the Commission noted the important role played by the UNCITRAL website (www.uncitral.org) and the UNCITRAL Law Library.

254. The Commission welcomed the UNCITRAL Law Library's inclusion on the UNCITRAL website of a new feature highlighting UNCITRAL's role in supporting the Sustainable Development Goals.[64] The Commission recalled its request that the Secretariat continue to explore the development of new social media features on the UNCITRAL website as appropriate,[65] noting that the development of such features in accordance with the applicable guidelines was also welcomed by the General Assembly.[66] In this regard, the Commission noted with approval the continued development of the "What's new at UNCITRAL?" Tumblr microblog[67] and the establishment of an UNCITRAL presence on LinkedIn.[68] Finally, recalling the General Assembly resolutions commending the website's six-language interface,[69] the Commission requested the Secretariat to continue to provide, via the website, UNCITRAL texts, publications, and related information, in a timely manner and in the six official languages of the United Nations.

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[64] Available from www.uncitral.org/uncitral/about/SDGs/Sustainable_Development_Goals.html.

[65] *Official Records of the General Assembly, Seventieth Session, Supplement No. 17* (A/70/17), para. 247.

[66] General Assembly resolutions 69/115, para. 21; and 70/115, para. 21.

[67] Available from http://uncitral.tumblr.com.

[68] Available from www.linkedin.com/company/uncitral.

[69] General Assembly resolutions 61/32, para. 17; 62/64, para. 16; 63/120, para. 20; 69/115, para. 21; and 70/115, para. 21.

B. Consideration of a draft guidance note on strengthening United Nations support to States, upon their request, to implement sound commercial law reforms

255. The Commission recalled that, at its forty-eighth session, it considered a draft guidance note on strengthening United Nations support to States to implement sound commercial law reforms (A/CN.9/845).[70] After consideration, it requested States to provide to its secretariat any suggestion for revision of the text. It was agreed that the compilation of all comments received from States would be circulated by the Secretariat to all States together with a revised version of the text. It was understood that, if agreement of States on the revised text could be achieved before or during the consideration of the Commission's report in the Sixth Committee of the General Assembly in 2015, the Sixth Committee itself might wish to endorse the text, so as to avoid delay in issuing the document. Otherwise, the matter might need to be brought back to the Commission for consideration at its next session. The Secretariat was requested, in revising the text, to follow closely the wording of General Assembly resolution 2205 (XXI) on the establishment of UNCITRAL and avoid embarking into areas not directly linked to the UNCITRAL mandate.[71]

256. At its current session, the Commission took note of steps taken by the Secretariat to implement the above-referred decisions of the Commission. The Commission was also informed about statements made by States in the Sixth Committee on the subject and the results of informal consultations held in that body on the draft. The Commission also took note of paragraph 6 (e) of General Assembly resolution 70/115 on the report of UNCITRAL on the work of its forty-eighth session, by which the General Assembly recalled its resolutions stressing the need to strengthen support to Member States, upon their request, in the domestic implementation of their respective international obligations through enhanced technical assistance and capacity-building, welcomed the efforts of the Secretary-General to ensure greater coordination and coherence among United Nations entities and with donors and recipients, and took note of the ongoing discussion in the Commission of ways to strengthen support to Member States, upon their request, in the implementation of sound commercial law reforms. It was noted that the objective was to assist States but in no way to impose on States the adoption of the guidance note.

257. At the session, the Commission had before it: (a) the compilation of comments by States received by the Secretariat on document A/CN.9/845 in response to a note verbale circulated by the Secretariat to States on 21 July 2015 (A/CN.9/882, section II); (b) a comment by a State (transmitted to the Secretariat in a note verbale of 23 October 2015) on a version of the guidance note prepared pursuant to those comments and circulated to States by the Secretariat in a note verbale of 8 October 2015 (the 8 October 2015 version) (A/CN.9/882, section III); (c) a draft guidance note on strengthening United Nations support to States, upon their request, to implement sound commercial law reforms, prepared pursuant to consultations held

[70] *Official Records of the General Assembly, Seventieth Session, Supplement No. 17* (A/70/17), para. 248.

[71] Ibid., paras. 251-252.

in the Sixth Committee, and comments received from States, on the 8 October 2015 version (A/CN.9/883); and (d) a comment by a State (transmitted to the Secretariat in a note verbale of 20 June 2016) on the draft guidance note contained in document A/CN.9/883 (A/CN.9/882/Add.1).

258. The Commission considered the draft guidance note contained in document A/CN.9/883 together with the comment received from one State on that draft and the comments received from States on the earlier versions of the draft guidance note. As regards document A/CN.9/882/Add.1, the delegation author of the comment contained in that document requested the Secretariat to issue a corrigendum to the English and other language versions of that document containing the words "incl. the word 'rule-based'" to the effect that those words would be deleted. It also requested that, in the Russian version of document A/CN.9/883, the phrase "основанные на верховенстве права коммерческие отношения" in the first sentence of paragraph 9, the phrase "основанных на верховенстве права коммерческих отношений и международной торговли" in the first sentence of paragraph 19, and the phrase "коммерческих отношений, основанных на верховенстве права" in the first sentence of paragraph 22, be redrafted. References to the rule of law ("верховенство права") in those phrases were found inappropriate. A more appropriate term in Russian for the term "rule-based" used in the English version of document A/CN.9/883 in those instances would be "основанных на правилах". That other term should be used in the final text of the guidance note in all instances where the English text refers to the rule-based commercial relations and international trade.

259. Concerns were expressed about the proposal to remove the phrase "and respect for the rule of law" in the second sentence of paragraph 9. After discussion, the Commission agreed to replace the phrase "the respect for the rule of law" with the phrase "respect for legality/rule-based order" to make it closer to the French version of the text, with the consequential deletion of footnote 5. The Commission also emphasized the need to pay particular attention to consistency between the various linguistic versions of the guidance note when finalizing the text.

260. The Commission agreed that the footnotes should be removed from the final text of the guidance note except for those intended to guide users of the guidance note to UNCITRAL instruments, online resources and other essential information (footnotes 13 and 15 to 25).

261. As regards the annex and paragraph 12 referring to the checklist of illustrative indicators, the Commission heard a proposal that the annex should not be part of the guidance note and no references thereto should be made in the guidance note. The Commission agreed to that proposal on the understanding that, while not being appended to the guidance note as a policy document, the annex should be used at working level, as an internal document of the UNCITRAL secretariat, when needed in the negotiation of specific projects with relevant stakeholders, donors and possible partners of UNCITRAL in technical cooperation and assistance projects.

262. Subject to the above-mentioned changes, the Commission endorsed the text of the draft guidance note contained in document A/CN.9/883 and requested the Secretary-General to finalize it in the light of deliberations at the current session, and to circulate the final text as broadly as possible to its intended users.

X. Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts

263. The Commission considered document A/CN.9/873 "Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts", which provided information on the current status of the CLOUT system and of the digests of case law relating to the United Nations Sales Convention and the UNCITRAL Model Law on International Commercial Arbitration (the Model Law on Arbitration).

264. The Commission expressed its continuing belief that the system of CLOUT and the digests are an important tool for promoting uniform interpretation of the law relating to UNCITRAL texts and noted with appreciation the increasing number of UNCITRAL legal texts that are currently represented in CLOUT. As at 9 May 2016 (date of A/CN.9/873), 166 issues of compiled case-law abstracts had been prepared, dealing with 1,551 cases. The cases related to the following legislative texts:

- The New York Convention
- Convention on the Limitation Period in the International Sale of Goods (New York, 1974)[72] and Convention on the Limitation Period in the International Sale of Goods as amended by the Protocol of 11 April 1980 (Vienna)[73]
- United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978)[74]
- United Nations Sales Convention
- United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 1995)[75]
- United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005)[76]
- Model Law on Arbitration
- UNCITRAL Model Law on International Credit Transfers (1992)[77]
- UNCITRAL Model Law on Electronic Commerce (1996)[78]
- UNCITRAL Model Law on Cross-Border Insolvency (1997)[79]
- UNCITRAL Model Law on Electronic Signatures (2001)[80]

265. The Commission took note that the majority of the abstracts published referred to Western European and other States, as indicated in a note by the Secretariat

[72] United Nations, *Treaty Series*, vol. 1511, No. 26119.
[73] Ibid., vol. 1511, No. 26121.
[74] Ibid., vol. 1695, No. 29215.
[75] Ibid., vol. 2169, No. 38030, p. 163.
[76] General Assembly resolution 60/21, annex.
[77] *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 17* (A/47/17), annex I.
[78] General Assembly resolution 51/162, annex.
[79] General Assembly resolution 52/158, annex.
[80] General Assembly resolution 56/80, annex.

(A/CN.9/840) submitted to the Commission at its forty-eight session, in 2015.[81] When compared with the figures provided in that note, a small increase in case law from Eastern European States and a small decrease in case law from African States could be noted. As to the legislative texts reported in CLOUT, the United Nations Sales Convention and the Model Law on Arbitration were still the most represented in the system, although there was an increase of cases concerning the UNCITRAL Model Law on Cross-Border Insolvency and the New York Convention.

266. The Commission was informed that eleven new national correspondents had been appointed in the period under review, two of whom replaced previous correspondents, and that the network of national correspondents was composed of 74 experts representing 35 countries. The Commission was also informed that pursuant to a decision taken at its forty-second session, in 2009,[82] the mandate of the current network of national correspondents would expire in 2017 and that States would be requested to appoint and/or reappoint their national correspondents. The Commission noted that since the previous note of the Secretariat (A/CN.9/840), national correspondents had provided approximately 47 per cent of the abstracts published in CLOUT. This figure was consistent with the figure provided to the Commission at its forty-eighth session in 2015.

267. The Commission also heard a short account of the meeting of national correspondents, held in July 2015, at which participants encouraged the Secretariat to increase the UNCITRAL texts available in CLOUT and to initiate cooperation with organizations and institutions dealing with topics pertaining to those texts not yet included in the system so as to identify relevant case law.

268. The Commission commended the continued effort of its secretariat on the promotion of the digests and expressed its appreciation for the new round of updates of the digest of case law relating to the United Nations Sales Convention being finalized.

269. The Commission expressed its appreciation for the functioning of the upgraded CLOUT database and noted with particular interest the cooperation of its secretariat with the United Nations Volunteer programme to populate the database with the full text decisions of the abstracts published in previous years. The Commission also noted with appreciation the performance of the website www.newyorkconvention1958.org (see para. 197 above), and the successful coordination between that website and the CLOUT system.

270. As in previous sessions, the Commission commended the Secretariat for the work on CLOUT, once again taking note of the resource-intensive nature of the system and acknowledging the need for further resources to sustain it. The Commission thus appealed to all States to assist the Secretariat in its search for available funding at the national level to ensure sustained operability of the system.

[81] *Official Records of the General Assembly, Seventieth Session, Supplement No. 17* (A/70/17), para. 253.

[82] Ibid., *Sixty-fourth Session, Supplement No. 17* (A/64/17), para. 370.

XI. Status and promotion of UNCITRAL legal texts

271. The Commission considered the status of the conventions and model laws emanating from its work and the status of the New York Convention, on the basis of a note by the Secretariat (A/CN.9/876). The Commission noted with appreciation the information on treaty actions and legislative enactments received since its forty-eighth session.

272. The Commission also noted the following actions and legislative enactments made known to the Secretariat subsequent to the submission of the Secretariat's note:

(a) the Mauritius Convention on Transparency[83] — signature by the Netherlands (1 State party);

(b) the Model Law on Arbitration— enactment of the Model Law as amended in 2006 in Republic of Korea (2016);[84]

(c) UNCITRAL Model Law on International Commercial Conciliation (2002)[85] — enactment in Malaysia (2012).

273. Considering the broader impact of UNCITRAL's texts, the Commission also took note of the bibliography of recent writings related to the work of UNCITRAL (A/CN.9/874) and the influence of UNCITRAL legislative guides, practice guides and contractual texts as described in academic and professional literature. The Commission noted the importance of facilitating a comprehensive approach to the creation of the bibliography and the need to remain informed of activities of non-governmental organizations (NGOs) active in the field of international trade law. In this regard, the Commission recalled and repeated its request that NGOs invited to the Commission's annual session donate copies of their journals, reports and other publications to the UNCITRAL Law Library for review.[86] The Commission expressed appreciation to all NGOs that donated materials. The Commission noted, in particular, the addition of current and forthcoming issues of the following journals to the UNCITRAL Law Library collection: *b-Arbitra* (Belgian Centre for Arbitration and Mediation), *Chinese Journal of Private International Law and Comparative Law* (CSPIL), *International Insolvency Review* (INSOL International), *Masaryk University Journal of Law and Technology* (Institute of Law and Technology, Faculty of Law, Masaryk University), *Ports & Harbors* (International Association of Ports and Harbors), *Revue de l'Arbitrage* (Comité Français de l'Arbitrage), *World SME News* (World Association for Small and Medium Enterprises), and *Wuhan University International Law Review* (CSPIL).

[83] The Convention has not yet entered into force; it requires three States parties for entry into force.

[84] The legislation amends previous legislation based on the unamended Model Law.

[85] General Assembly resolution 57/18, annex. See also *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 17* (A/57/17), annex I.

[86] Ibid., *Seventieth Session, Supplement No. 17* (A/70/17), para. 264.

XII. Coordination and cooperation

A. General

274. The Commission had before it a note by the Secretariat (A/CN.9/875) providing information on the activities of international organizations active in the field of international trade law in which the Secretariat had participated since the last note to the Commission (A/CN.9/838). The Commission expressed appreciation for the Secretariat engaging with a high number of organizations both within and outside the United Nations system. Among others, the Secretariat had participated in the activities of the following organizations: United Nations Conference on Trade and Development, United Nations Department of Economic and Social Affairs, United Nations Economic Commission for Europe, UNEP, UN/ESCAP, United Nations Inter-Agency Cluster on Trade and Productive Capacity, World Bank, APEC, Hague Conference on Private International Law, OECD, Unidroit and WTO.

275. By way of example of current efforts, the Commission took note with satisfaction of the coordination activities involving the Hague Conference on Private International Law and Unidroit as well as the activities on the rule of law in those areas of work of the United Nations and other entities that were of relevance for the work of UNCITRAL.

276. The Commission also noted that the Secretariat participated in expert groups, working groups and plenary meetings with the purpose of sharing information and expertise and avoiding duplication of work in the resultant work products. The Commission further observed that coordination work often involved travel to meetings of those organizations and the expenditure of funds allocated for official travel. The Commission reiterated the importance of such work being undertaken by UNCITRAL as the core legal body in the United Nations system in the field of international trade law and supported the use of travel funds for that purpose.

277. As regards coordination activities with OECD, the Commission noted the importance of a joint project for the promotion of commercial arbitration and UNCITRAL transparency standards through the co-organization of an annual conference for a Euro-Mediterranean Community of International Arbitration followed by a publication of the conference proceedings. It therefore requested the Secretariat to publish the conference proceedings, including electronically and to disseminate it broadly to any interested bodies.

278. Reference was made to the "Joint proposal on cooperation in the area of international commercial contract law (with a focus on sales)" (A/CN.9/892). It was explained that in the last fifty years a number of international governmental and non-governmental organizations had made several significant contributions at the global and regional levels to the progressive unification and harmonization of contract law. It was added that those legislative efforts were largely complementary but that information on how they related to each other was not always readily available. As a result, different stakeholders interested in adopting, applying or using that vast legislative corpus could face challenges in identifying the relevant texts and placing them in context.

279. Hence, it was indicated that the proposal aimed at facilitating orientation in the field of uniform contract law, with a focus on sales law, by compiling relevant texts

and providing a short illustration thereof, including with respect to their relationship to other texts. Thus, it was explained, the resulting guidance text could significantly contribute to the coherent adoption, interpretation and use of uniform texts, and to strengthen their underlying principles, such as freedom of contract. It was added that that exercise was intended to be carried out with the involvement of experts and within available resources and that work at the working group level was not envisaged in the near future.

280. It was recalled that the Council on General Affairs and Policy of the Hague Conference on Private International Law had welcomed the proposal[87] and that the Governing Council of Unidroit had recommended to the General Assembly of Unidroit inclusion of the project in its Work Programme for the triennium 2017-2019.[88]

281. After discussion, the Commission approved the "Joint proposal on cooperation in the area of international commercial contract law (with a focus on sales)" and asked the Secretariat to implement the Commission's decision in coordination with the Hague Conference on Private International Law and with Unidroit and to report periodically on the progress of that work.

282. Having mandated work in the area of international commercial contract law (with a focus on sales), the Commission requested the Secretariat to reflect that decision in its publications programme and take any other measures to ensure future publication of any final text resulting from that work, including electronically and in the six official languages of the United Nations.

B. Reports of other international organizations

283. The Commission took note of statements made on behalf of the following international intergovernmental organizations: a summary of which is reported below.

1. Unidroit

284. The Secretary-General of Unidroit reported on the main activities of Unidroit since the forty-eighth session of UNCITRAL, in 2015. The Commission was in particular informed about the following:

(a) Following the completion in 2015 of the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming, developed in partnership with the Food and Agricultural Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD), Unidroit continued to cooperate with its partners in the promotion and implementation of that Guide;

(b) The Convention on International Interests in Mobile Equipment ("Cape Town Convention") continued to attract new accessions, as well as the Aircraft

[87] See Conclusions and recommendations adopted by the Council of March 2016, para. 23, available from www.hcch.net/en/governance/council-on-general-affairs.

[88] See Unidroit Governing Council, Summary of the Conclusions, 95th Session, Rome, 18-20 May 2016, C.D. (95) Misc. 2, para. 18, available from www.unidroit.org/english/governments/councildocuments/2016session/cd-95-misc02-e.pdf.

Protocol and the Rail Protocol. The fourth session of the Space Protocol Preparatory Commission was held in December 2015, which approved the regulations for the international registry, as well as the draft Rules of Procedure for the Commission of Experts of the Supervisory Authority (CESAIR) in relation to the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets. Significant progress was also made on the possible fourth Protocol on matters specific to agricultural, mining and construction equipment, for which two very productive Study Group meetings were held in October 2015 and March 2016, with valuable involvement of UNCITRAL. The preliminary draft Protocol had been submitted to the Governing Council;

(c) The Governing Council, at its ninety-fifth session, approved the proposed amendments to the Principles of International Commercial Contracts, which aimed at addressing the special needs of long-term contracts and authorized the publication of a new edition, to be known as the "2016 UNIDROIT Principles of International Commercial Contracts";

(d) Unidroit was continuing to work with the European Law Institute to adapt the American Law Institute (ALI)/Unidroit Principles of Transnational Civil Procedure (2004) with a view to drafting Europe-specific regional rules;

(e) The Committee on Emerging Markets Issues, Follow-up and Implementation, established to assist with the promotion and implementation of the Unidroit Convention on Substantive Rules for Intermediated Securities (Geneva Convention), was expected to submit the draft Legislative Guide on Principles and Rules capable of enhancing trading in securities in emerging markets in autumn 2016;

(f) The Governing Council of Unidroit, at its ninety-fifth session, considered the draft Triennial Work Programme for the 2017-2019 period. Among the projects that the Governing Council agreed to recommend for adoption by the Unidroit General Assembly at its seventy-fifth session were the preparation of a guidance document on existing texts in the area of international sales law in cooperation with the Commission and the Hague Conference on Private International Law (see also para. 280 above) and a new project to be carried out in cooperation with the Rome-based organizations relating to land investment contracts. It was noted that in considering the work programme, careful consideration was given to avoid any conflict or overlaps with the work of other organizations, in particular the Commission;

(g) A series of international conferences and lectures were being held to celebrate the ninetieth anniversary of Unidroit.

2. The Hague Conference on Private International Law

285. A representative of the Permanent Bureau expressed appreciation for the continuing cooperation between The Hague Conference, Unidroit and UNCITRAL on a number of different projects. It was noted that, in the context of such cooperation, The Hague Conference had on various occasions shared its expertise in projects of private international law of common interest to the three organizations, and that it was ready to further contribute to other similar projects in the future. It was also requested that the Secretariat also take part in projects being conducted by the Hague Conference to provide valuable input.

C. International governmental and non-governmental organizations invited to sessions of UNCITRAL

286. At its current session, the Commission recalled that, at its forty-third session, in 2010, it had adopted the summary of conclusions on UNCITRAL rules of procedure and methods of work.[89] In paragraph 9 of the summary, the Commission had decided to draw up and update as necessary a list of international organizations and NGOs that had been invited to sessions of the Commission. The Commission also recalled that since that session the Secretariat had been reporting to the Commission annually about organizations added to the list. The Commission also recalled that, at its forty-eighth session, in 2015, it requested the Secretariat, when presenting its oral report on new organizations invited to sessions of UNCITRAL, to provide comments on the manner in which newly invited organizations fulfilled the criteria applied by the Secretariat in making its decision to invite new NGOs.[90]

287. The Commission took note that since its forty-eighth session, in 2015, the following organizations had been added in the list of NGOs invited to sessions of UNCITRAL: ArbitralWomen; European Commerce Registers' Forum; Florence International Mediation Chamber (FIMC); GSM Association (GSMA); International Academy of Mediators (IAM); and International Arbitration Court of the Belarusian Chamber of Commerce and Industry (IAC). One organization, the Commonwealth Association of Law Reform Agencies (CALRAs), was removed from the list upon their request received by the Secretariat on 23 May 2016. The Commission noted reasons for the Secretariat's decision to invite those additional NGOs to sessions of UNCITRAL and its working groups. It also heard information about NGOs whose requests to be invited to sessions of UNCITRAL and its working groups were rejected and reasons for the rejection.

288. The Commission also took note that since its forty-eighth session, in 2015, the Caribbean Court of Justice (CCJ), upon its request to the Secretariat of 22 December 2015, was added in the list of intergovernmental organizations invited to sessions of UNCITRAL and its working groups. Other changes made by the Secretariat to the lists of intergovernmental and non-governmental organizations invited to sessions of UNCITRAL and its working groups were editorial, reflecting mainly amendments in the names of the organizations and their acronyms.

289. The Commission also took note that, pursuant to General Assembly resolutions 68/106 and 69/115 (para. 8 in both resolutions) and 70/115 (para. 7), all States and invited organizations were reminded, when they were invited to UNCITRAL sessions, about rules of procedure and work methods of UNCITRAL. Such a reminder is effectuated by inclusion in invitations issued to them of a reference to a dedicated web page of the UNCITRAL website where main official documents of UNCITRAL pertaining to its rules of procedure and work methods could be easily accessed.

290. The Commission welcomed the detailed and informative report of the Secretariat presented pursuant to its request at its forty-eighth session, in 2015

[89] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), annex III.

[90] Ibid., *Seventieth Session, Supplement No. 17* (A/70/17), para. 280.

(see para. 286 above). It endorsed the decisions of the Secretariat as regards acceptance of new NGOs.

XIII. UNCITRAL regional presence

291. The Commission had before it a note by the Secretariat on the activities undertaken by its Regional Centre for Asia and the Pacific ("the Regional Centre") (A/CN.9/877) and heard an oral report by the head of the Regional Centre.

292. The Commission recognized the tangible progress made, as a result of the regional activities of the Secretariat, in the levels of awareness, adoption and implementation of harmonized and modern international trade law standards, in particular those elaborated by UNCITRAL, and emphasized the growing significance of the Regional Centre in increasing regional contributions to the work of UNCITRAL.

293. Strong support was expressed for the various activities undertaken by the Secretariat, which were aimed at: (a) providing capacity-building and technical assistance services to States in the Asia-Pacific region, including to international and regional organizations, and development banks; (b) supporting public, private and civil society initiatives to enhance international trade and development by promoting certainty in international commercial transactions through the dissemination of international trade norms and standards, in particular those elaborated by UNCITRAL; (c) building and participating in regionally-based international trade law partnerships and alliances, including with other appropriate United Nations funds, programmes and specialized agencies; (d) strengthening information, knowledge and statistics through briefings, workshops, seminars, publications, social media, and information and communications technologies, including in regional languages; and (e) functioning as a channel of communication between States and UNCITRAL for non-legislative activities of the Commission.

294. The Commission took note of the Secretariat's plans to participate in the United Nations Partnership Frameworks (Lao People's Democratic Republic in 2017) and to develop plurennial and systematized regional programmes around three core areas, namely: (a) integrated trade law reforms; (b) the Sustainable Development Goals; and (c) aid-for-trade, pursuing long-term tailor-made capacity-building, in particular in least developed countries, landlocked developing countries and small island developing States in Asia and the Pacific, so as to ensure legal uniformity and general economic stability, and in close cooperation and coordination with institutions active in trade law reform, in the region.

295. The Regional Centre was encouraged to dedicate more of its resources to promoting UNCITRAL texts in the context of regional economic integration and cooperation frameworks, including, but not limited to, the Association of Southeast Asian Nations (ASEAN) and APEC.

296. The Commission requested the Secretariat to actively engage in fundraising activities in order for the Regional Centre to carry out its activities and urged Member States to provide voluntary contributions to the project.

297. The Commission noted that this year marked the fifth year of operation of the Regional Centre. The Commission was informed that the Secretariat would engage

with relevant stakeholders in the Asia-Pacific region to evaluate the achievements as well as the lessons learned during that period. Such assessment could also be expected to further define the role of the Regional Centre and to develop a regional priority framework for the implementation of strategies and programmes across the region, in order to respond to the specific needs of the region in terms of capacity-building and technical assistance services.

298. The Commission noted with appreciation the exchange of letters between the United Nations and China on 16 September 2015, and the subsequent signing on 26 October 2015 of a memorandum of understanding between the United Nations and the Government of the Hong Kong Special Administrative Region of China, for the contribution of a non-reimbursable loan of an expert to the Regional Centre, providing a legal expert to engage in technical cooperation and assistance activities of the Regional Centre. The Commission expressed its gratitude to the Government of China for its support to the operations of the Regional Centre.

299. The Government of the Republic of Korea stated its continued willingness to support the operation of the Regional Centre, extending its contribution beyond the initial five-year period agreed in 2011, for an additional five-year period covering 2017 to 2021, with an annual financial contribution of $450,000 to the UNCITRAL Trust Fund for Symposia, in addition to the office premises, equipment and furniture which it had already provided. The Republic of Korea has also extended its offer to provide a legal expert on a non-reimbursable loan basis to engage in technical cooperation and assistance activities for the coming years. The Commission was informed that the Secretariat was formalizing the necessary arrangements for this extension, including the necessary amendments to the Memorandum of Understanding signed on 18 November 2011 between the United Nations, and the Ministry of Justice and the Incheon Metropolitan City of the Republic of Korea.

300. The Commission expressed its gratitude to the Government of the Republic of Korea for its generous gesture to extend its contribution, allowing for the continued operation of the Regional Centre beyond the initial pilot-project, subject to the relevant rules and regulations of the United Nations and the internal approval process in the United Nations Office of Legal Affairs.

301. The Commission encouraged the Secretariat to continue seeking cooperation, including through formal agreements, with regional stakeholders, including development banks, to ensure coordination and funding for its technical assistance and capacity-building activities and services aimed at promoting the adoption of UNCITRAL texts in the region.

302. The Commission recalled the view expressed at previous sessions that, in light of the importance of regional presence for raising awareness of UNCITRAL's work, and especially for promoting the adoption and uniform interpretation of UNCITRAL texts, and in view of the successful activities of the Regional Centre, further efforts should be made to emulate its example in other regions. The Secretariat was requested to pursue consultations on the possible establishment of other UNCITRAL regional centres and/or capacity-building centres. While the Secretariat staff were expected to devote some of their time to operating or otherwise assisting regional centres, including through training of project personnel, a balanced approach was recommended by the Commission to ensure that the benefits resulting

from the establishment of a regional centre continued to outweigh any cost associated with the time spent by Secretariat staff on such activities.

XIV. Role of UNCITRAL in promoting the rule of law at the national and international levels

A. Introduction

303. The Commission recalled that the item on the role of UNCITRAL in promoting the rule of law at the national and international levels had been on the agenda of the Commission since its forty-first session, in 2008,[91] in response to the General Assembly's invitation to the Commission to comment, in its report to the General Assembly, on the Commission's current role in promoting the rule of law.[92] The Commission further recalled that since that session, the Commission, in its annual reports to the General Assembly, had transmitted comments on its role in promoting the rule of law at the national and international levels, including in the context of post-conflict reconstruction. It expressed its conviction that the promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels.[93] That view had been endorsed by the General Assembly.[94]

304. At its forty-ninth session, the Commission heard an oral report by the Secretariat on the implementation of the relevant decisions taken by the Commission at its forty-eighth session.[95] A summary of the report and decisions of the Commission related thereto are contained in section B below.

305. The Commission recalled that at its forty-third session, in 2010, it had indicated that it considered it essential to maintain a regular dialogue with the Rule of Law Coordination and Resource Group (RoLCRG) through the Rule of Law Assistance Unit and to keep abreast of progress made in the integration of the work of UNCITRAL into United Nations joint rule of law activities. To that end, it had requested the Secretariat to organize briefings by the Rule of Law Assistance Unit every other year, when sessions of the Commission were held in New York.[96]

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[91] For the decision of the Commission to include the item on its agenda, see *Official Records of the General Assembly, Sixty-second Session, Supplement No. 17* (A/62/17), part two, paras. 111-112.

[92] General Assembly resolutions 62/70, para. 3; 63/128, para. 7; 64/116, para. 9; 65/32, para. 10; 66/102, para. 12; 67/97, para. 14; 68/116, para. 14; and 69/123, para. 17.

[93] *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17* and corrigendum (A/63/17 and Corr.1), para. 386; ibid., *Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 413-419; ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), paras. 313-336; ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 299-321; ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), paras. 195-227; ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 267-291; ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), paras. 215-240; and ibid., *Seventieth Session, Supplement No. 17* (A/70/17), paras. 318-324.

[94] Resolutions 63/120, para. 11; 64/111, para. 14; 65/21, paras. 12-14; 66/94, paras. 15-17; 67/89, paras. 16-18; 68/106, para. 12; 69/115, para. 12; and 70/115, para. 11.

[95] *Official Records of the General Assembly, Seventieth Session, Supplement No. 17* (A/70/17), paras. 300-301.

[96] Ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 335.

Consequently, briefings had taken place at the Commission's forty-fifth and forty-seventh sessions.[97] At the current session, the Commission had another rule of law briefing by the Rule of Law Assistance Unit. Its summary is contained in section C below.

306. The Commission took note of General Assembly resolution 70/118 on the rule of law at the national and international levels, by paragraph 20 of which the General Assembly invited the Commission to continue to comment, in its reports to the General Assembly, on its current role in promoting the rule of law. The Commission decided to focus its comments to the General Assembly on practices of States in the implementation of multilateral treaties emanated from the work of UNCITRAL and practical measures to facilitate access to justice in the commercial law context, in particular by MSMEs, in line with paragraph 23 of that resolution. The comments were formulated following a panel discussion with participation of invited experts. The comments and a summary of the panel discussion are contained in section D below.

B. Implementation of the relevant decisions taken by the Commission at its forty-eighth session

307. The Commission recalled that at its forty-eighth session it requested States members of UNCITRAL, its Bureau at the current session and its secretariat to take appropriate steps to ensure that the positive developments related to UNCITRAL are retained and if possible reinforced, in subsequent stages of negotiation, adoption and implementation of the post-2015 development agenda, in particular in the outcome documents of the Addis Ababa Conference and the 2015 Summit and in the indicators that would accompany the Sustainable Development Goals and targets.[98]

308. The Commission noted with satisfaction that States, in paragraph 89 of the outcome document of the Third International Conference on Financing for Development, held in Addis Ababa on 13-16 July 2015 (the Addis Ababa Action Agenda),[99] endorsed the efforts and initiatives of UNCITRAL, as the core legal body within the United Nations system in the field of international trade law, aimed at increasing coordination of and cooperation on legal activities of international and regional organizations active in the field of international trade law and at promoting the rule of law at the national and international levels in that field. The Commission took note that the Addis Ababa Action Agenda was an integral part of the 2030 Agenda for Sustainable Development adopted by States on 25 September 2015.[100]

309. The Commission also took note of its relevance to a number of targets in the 2030 Agenda for Sustainable Development and expressed its appreciation for the new web page of the UNCITRAL website that gave a general idea about the role of UNCITRAL in the 2030 Agenda for Sustainable Development, including as regards the promotion of the rule of law (see para. 254 above).

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[97] Ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), paras. 199-210; and ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), paras. 229-233.

[98] Ibid., *Seventieth Session, Supplement No. 17* (A/70/17), para. 300.

[99] General Assembly resolution 69/313.

[100] General Assembly resolution 70/1, para. 40.

310. The Commission endorsed the participation of its secretariat in the work of the Inter-Agency Task Force (IATF) on Financing for Development (FfD), convened by the Secretary-General to: (a) review progress in implementing the Addis Ababa Action Agenda; and (b) advise the intergovernmental follow-up process thereon. The Commission welcomed the UNCITRAL-related section in the 2016 Inaugural Report of IATF, including the proposed framework for monitoring the progress with the implementation of paragraph 89 of the Addis Ababa Action Agenda.

311. Finally, the Commission was informed about efforts made by its secretariat towards reflecting international commercial law concerns in the global indicator framework being developed by the Inter-Agency and Expert Group on Sustainable Development Goal Indicators (IAEG-SDGs). The Commission called upon States members of the IAEG-SDGs to make sure that the global indicator framework did not overlook areas of work by UNCITRAL.

312. The Commission reiterated its call to its secretariat to continue exploring synergies and expanding outreach to delegations of States to various United Nations bodies with the view of increasing their awareness of the work of UNCITRAL and its relevance to other areas of work of the United Nations.[101] Support was expressed for outreach to various bodies of the United Nations system operating at a country level with the mandate to assist with local law reforms, be it in the promotion of the rule of law, development or other context, so that they appropriately factor in their work the promotion of the rule of law in commercial relations generally and UNCITRAL standards in particular.

C. Summary of the rule of law briefing

313. The Director of the Rule of Law Assistance Unit in the Executive Office of the Secretary-General briefed the Commission about developments related to the United Nations rule of law agenda that occurred since the 2014 rule of law briefing in UNCITRAL.

314. The Commission noted the integration of rule of law aspects in target 16.3 of the 2030 Agenda for Sustainable Development, the ongoing work on indicators to that target and the cross-cutting impact of the rule of law on the achievement of the Sustainable Development Goals. It noted that efforts of the Rule of Law Assistance Unit towards broadening a global indicator to target 16.3 to issues of civil justice were unsuccessful and that the indicator would most likely focus on criminal law issues. A more comprehensive and contextualized follow-up of progress in the achievement of the Sustainable Development Goals would require the development of additional indicators at the regional and national levels. The national-led processes would play the primary role, as complemented and supported by follow-up and review processes at the global level.

315. The Commission noted that different United Nations entities were implementing initiatives to enhance national capacities for data collection and analysis required to monitor progress with the implementation of the Sustainable

[101] *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 284.

Development Goals. The attention of the Commission was brought in particular to two of them:

(a) The Global Alliance, aimed at promoting effective reporting under Goal 16, comprised of representatives from Member States, civil society and the private sector, and facilitated by the United Nations Development Programme (UNDP), which will coordinate and liaise with other United Nations entities and agencies as required; and

(b) The initiative of the United Nations Development Group (UNDG) to support the United Nations County Teams (UNCTs) in the implementation of the new agenda, through their respective United Nations Development Assistance Frameworks (UNDAFs). The initiative is called MAPS — Mainstreaming, Acceleration and Policy Support: mainstreaming refers to the integration of the 2030 Agenda into national and local plans for development, as well as into budget allocations, and the subsequent crafting of UNDAFs around supporting the implementation of those plans; acceleration refers to the targeting of resources according to the priority areas identified in the mainstreaming process; and policy support refers to the timely assistance from the United Nations to national actors with skills and expertise. The MAPS provides a shared resource for the UNCT's substantive engagement with governments and partners on the Sustainable Development Goals, paying special attention to the cross-cutting elements of partnerships, data and accountability.

316. The Commission was informed that reports of the Secretary-General on United Nations rule of law activities continue illustrating examples of rule of law activities by various United Nations entities that are members of the RoLCRG, including by UNCITRAL in the field of international commercial law.

317. The Commission expressed appreciation to the Director of the Rule of Law Assistance Unit for the briefing and reiterated its conviction that the implementation and effective use of modern private law standards in international trade are essential for advancing good governance, sustained economic development and the eradication of poverty and hunger. The promotion of the rule of law in commercial relations should therefore be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels. The Commission encouraged the Secretary-General to devise effective practical mechanisms to achieve such integration. The Commission looked forward to hearing the progress achieved in that respect at the next rule of law briefing scheduled for the fifty-first session of UNCITRAL, in 2018.

D. UNCITRAL comments to the General Assembly

1. Summary of the panel discussion on practices of States in the implementation of multilateral treaties emanated from the work of UNCITRAL

318. The speakers considered the topic timely and important and requiring a further in-depth analysis and follow-ups. The undisputed role of UNCITRAL in promoting the rule of law in commercial relations, in particular by reconciling the views and approaches of countries at various levels of development and between different legal systems, was highlighted.

319. Speakers referred to various factors influencing the implementation by States of treaties emanating from the work of UNCITRAL, highlighting their distinct features compared to international treaties in other areas of law. In particular, the level and intensity of support by domestic non-State actors (industry and other interest groups), in view of the international landscape and changing economic and technological conditions and business practices, were highlighted. The need for a dynamic domestic political landscape that may result in a change of policies and priorities, and the competing need to deal with treaties from other branches of law, were also mentioned as factors to be taken into account. The need to reconcile views at federal and State levels was also to be considered in some countries.

320. The importance of local capacity to ratify and implement a treaty mattered since international commercial law treaties tend to be complex and to require expert knowledge for their understanding. The explanatory notes to treaties, the appropriate participation of a State in treaty-making processes, and the technical assistance provided to a State with treaty implementation were all considered helpful for building such capacity.

321. Nevertheless, practices of States of signing treaties without being committed to their ratification were noted. For an increase of the level of commitment of States to pursue ratification, it was suggested to expand the number of interested State constituencies beyond the foreign and justice ministries to include finance and trade ministries. The importance of regional efforts, such as those within APEC, towards achieving commercial law harmonization and unification within a particular region was also emphasized. The establishment of a dedicated forum at the international and regional levels where States can meet to share and discuss experiences regarding implementation of commercial law conventions was recommended. Such forums could be used for identifying obstacles to ratification and implementation of treaties, and solutions to overcome them, including through possible changes in treaty design and substance. Those processes could be informative, not only with respect to already concluded treaties but also to possible future ones.

322. The importance for effective implementation of treaties of achieving their uniform interpretation and application was noted. Speakers recognized the role of CLOUT and digests (see chapter X above) in that respect. Reference was made to the international commitment of States under international commercial law treaties to interpret them with due regard to their international character and the need to promote uniformity in their application and the observance of good faith in international trade. These commitments presuppose the autonomous interpretation of those treaties rather than their interpretation in light of domestic law and concepts, except when the latter would be acceptable or mandatory under the treaty itself.

323. It was noted that unjustified resort to domestic concepts or concepts of any other preferred law in order to resolve interpretative problems that might arise under the international commercial law treaties defeated the very purpose of these instruments, namely the creation of a uniform law aimed at the creation of legal certainty and the removal of legal barriers in international trade. They might lead to a battle of interpretation trends, and jeopardized the universal acceptability of international commercial law treaties (prompting parties to opt out from the application of a treaty to avoid giving the other party the competitive advantage of reliance on its domestic interpretation of that treaty). The notion of a treaty being a

neutral law to which parties can resort when they wish to avoid the application of the domestic law of any of the contracting parties would thus be undermined. Damage to the predictability and reliability of law which a treaty meant to create, and increased transaction costs would as a result be inevitable.

324. A solution to the disruptive effects of the homeward and outwards trends in interpretations of international commercial law instruments might be achieved by changing the background assumptions and conceptions that justified such trends. To that end, the study of international commercial law standards in law schools, as a distinct autonomous layer of rules that may be applicable to a particular commercial transaction, was considered necessary.

325. Finally, the debate emphasized the importance of coordination and cooperation among rule-formulating bodies in the field of international commercial law, to avoid conflicting rules and interpretations, and to benefit from comparative advantages of agencies involved by using their respective expertise more efficiently. It was noted that the pool of entities relevant to rule formulating in the field of international trade has increased and now includes multilateral development banks and other international financial institutions.

326. Suggestions were made for the coordination and cooperation among relevant entities to become more structured and institutionalized. The current modus operandi was based largely on the good will of secretariats of the respective entities, which was not sufficient to ensure a clear division of labour and strategic work planning in the long run. Examples were given of recent successful cooperation between UNCITRAL, the Hague Conference and Unidroit in the area of international contracts law (see paras. 278-282 above). A similar level of cooperation should be achieved in other areas. In particular an acute need seemed to exist in the area of security interests/secured transactions, which involved at least six organizations.

327. Suggestions were made for monitoring conventions emanated from the work of UNCITRAL, based on already existing examples under other treaties. Distinct features of international commercial law instruments (e.g. party autonomy provisions) would require particular attention, for example through reporting on the use of the texts by private parties, courts and other relevant stakeholders, in addition to reports by States on the status of ratification and implementation of their respective international obligations under those treaties.

328. In ensuing discussions, a point was made that another factor influencing ratification of treaties was the level of complexity of treaties: examples were given of treaties that failed because of their excessive ambition, despite subsequent efforts of States to rectify their scope, structure and substance. Improving coordination was considered important but the efforts should not be limited to inter-secretariat cooperation: the indispensable role of State members of various rule-formulating entities was not to be underestimated.

329. Support was expressed for the idea that the quality of the texts depended on the quality of delegations. However, it was recalled that it was not for international organizations to dictate how States should compose their delegations.

330. A question was raised as to whether case law referred to in CLOUT was intended to have any effect as precedent. In response, the speakers unanimously

emphasized that CLOUT cases and digests could never displace the value of precedent under applicable domestic law. However, they were an important source of information for courts and arbitral tribunals, in particular because they could indicate prevailing trends and, for that reason, might be considered persuasive in interpreting international commercial law standards emanated from the work of UNCITRAL.

331. There was general support for holding rule of law panel discussions at future sessions. The Secretariat was requested in composing future rule of law panels to ensure a balanced representation of common and continental systems of law.

2. Summary of the panel discussion on practical measures to facilitate access to justice in the commercial law context, in particular by MSMEs

332. The Rule of Law Declaration,[102] in particular its UNCITRAL-related provisions,[103] was recalled in conjunction with the topic of the discussion. UNCITRAL was praised for removing legal obstacles to international trade by harmonizing international commercial law while carefully promoting the principle of party autonomy, without infringing on domestic systems and political or social values of States, and reconciling interests of various groups. It was also stated that the recent example of Working Group III (ODR) (see chapter V above) demonstrated how the working methods of UNCITRAL respected the rule of law.

333. The role of ODR in the electronic commerce environment was touched upon, with reference to the UNCITRAL Technical Notes on Online Dispute Resolution adopted by the Commission at the current session (see para. 217 above). The Technical Notes on Online Dispute Resolution, although not a normative text, were considered to provide an important reference to both ODR providers and users that currently operate under divergent rules. Being the first international document on the subject, they were expected to be widely used by practitioners and thus harmonize the field of ODR.

334. Speakers referred to the current practices of States to facilitate access to justice, often assisted by intergovernmental and non-governmental organizations active on such issues as mobile courts, electronic justice and informal justice mechanisms. Particular attention was paid to existing and emerging means to facilitate access to justice by MSMEs recognizing that they often carry the heavier burden in dysfunctional justice systems in the commercial law context. Higher transaction costs, problems with access to qualified affordable legal aid, imbalance of power and means in disputes involving larger economic operators and State officials, and corruption were cited as examples of particular issues faced by MSMEs in access to justice.

335. According to the representative of IDLO, a need existed to build increased judicial capacity to handle commercial disputes, especially those involving MSMEs, to increase judicial training generally, especially in least developed countries, and to assist MSMEs with drafting contracts and handling disputes. Examples were given of such activities in a number of countries in which IDLO operates.

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[102] General Assembly resolution 67/1.

[103] Ibid., para. 8.

336. The existence of various types of MSMEs (differing in size and structure) facing different issues was also recognized. MSMEs, depending on the legal and socioeconomic environment in which they operate, might face a variety of disputes and difficulties, and might thus require different tools to address them.

337. Attempts to create uniform solutions for resolving disputes involving MSMEs were questioned. It was also recalled that the many available dispute resolution mechanisms, each with its advantages and disadvantages, were more or less advisable, depending on the particular circumstances of a dispute and the parties involved. No such mechanism was therefore equally suitable for all disputes for all MSMEs. A dispute resolution method should be fit for the dispute and the parties involved; not the other way around. However the parties themselves, especially MSMEs are seldom in a position to assess their disputes and select the most suitable resolution technique on a case-by-case basis. Disputants are often pushed towards one method or another by various factors and actors (e.g. a legal counsel, court officer, development assistance entities).

338. It was suggested that neutral dispute profiling or an early case assessment tool might resolve that problem. The purpose of such an algorithm-based tool would be to assist private parties in commercial disputes in the choice of the method of dispute settlement most appropriate to the dispute, taking into account time, costs, location, language, applicable law and other considerations. Building such a tool would require extensive interdisciplinary and multicultural research that would also require an analysis of socioeconomic influences and sociocultural contexts. UNCITRAL, professional organizations and universities were invited to consider the desirability and feasibility of such a project, which might result in a tangible facilitation of access to justice, in particular by MSMEs.

3. Comments by the Commission

339. The Commission expressed its appreciation to the panellists for their statements and welcomed further discussion of the novel issues that they had raised at the 2017 Congress (see chapter XVI below).

340. The Commission recalled that, at its forty-seventh session, in 2014, it considered its role in promoting the rule of law by facilitating access to justice,[104] and at its forty-eighth session, in 2015, it considered the role of its multilateral treaty processes in promoting and advancing the rule of law.[105] The Commission noted that issues raised, and its comments conveyed to the General Assembly, in those years were relevant to the subtopics that were discussed during the rule of law panel discussion at the current session.

341. Specifically on the subtopic of practices of States in the implementation of multilateral treaties emanated from the work of UNCITRAL, the Commission noted with appreciation that its views as conveyed to the General Assembly at its previous session were again supported by empirical evidence presented by the panellists. In particular, the reported practices of States supported the view that the quality of implementation of treaties emanating from the work of UNCITRAL often depended

[104] *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 234-240.

[105] Ibid., *Seventieth Session, Supplement No. 17* (A/70/17), paras. 318-324.

on the quality of treaty-making processes, including the level and quality of participation by States and other interested stakeholders in UNCITRAL's rule-formulating work. The Commission reiterated, for consideration by the General Assembly, the conclusions reached at its previous session when discussing issues related to its treaty processes that required attention.[106]

342. On the subtopic of the panel discussion on practical measures to facilitate access to justice in the commercial law context, in particular by MSMEs, the Commission recalled the comments conveyed to the General Assembly in the report on the work of its forty-seventh session.[107] The Commission reiterated the view expressed at that session that its work was relevant to all dimensions of access to justice (normative protection, capacity to seek remedy, and capacity to provide effective remedies). It drew the attention of the General Assembly to the fact that, at the current session of the Commission, UNCITRAL had enlarged the spectrum of its standards in the area of commercial dispute settlement by adopting the UNCITRAL Technical Notes on Online Dispute Resolution (see para. 217 above), which were particularly useful for the resolution of low-value cross-border disputes in an electronic commerce environment, and thus to MSMEs.

XV. Work Programme of the Commission

343. The Commission recalled its agreement to reserve time for discussion of the Commission's overall work programme as a separate topic at each Commission session, as a tool to facilitate effective planning of its activities.[108]

344. The Commission took note of the documents prepared to assist its discussions on this topic (A/CN.9/878, further documents referred to therein and proposals submitted thereafter). It noted that those documents addressed UNCITRAL's main activities, i.e. legislative development and activities designed to support the effective implementation, use and understanding of UNCITRAL texts (collectively referred to as "support activities").

345. The Commission also took note of the progress of its Working Groups and regarding support activities reported earlier in the session (see chapters III to XIV of this report).

A. Legislative development

346. As regards current and future legislative activity, the Commission decided as follows.

1. MSMEs

347. The Commission recalled the summary of its discussion on planned and future work in the area of MSMEs (see paras. 219-224 above). After discussion, it reaffirmed the mandate given to Working Group I to work on (a) key principles in

[106] Ibid., para. 324.
[107] Ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 240.
[108] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 310.

business registration, and (b) legal questions surrounding the creation of a simplified business entity, both of which aimed at reducing the legal obstacles faced by MSMEs throughout their life cycle and, in particular, those in developing economies.

2. Arbitration and conciliation

348. The Commission noted that it had finalized and adopted the 2016 UNCITRAL Notes on Organizing Arbitral Proceedings (see paras. 157 and 158 above). The Commission recalled the summary of its discussion of the ongoing and possible future work in the area of arbitration and conciliation (see paras. 162-165 and 174-195 above).

349. After discussion, the Commission reaffirmed the mandate given to Working Group II to work on the preparation of an instrument dealing with enforcement of international commercial settlement agreements resulting from conciliation (see para. 165 above).

350. The Commission, in its final debates on the work programme, also reaffirmed the decision to retain the topics of (a) concurrent proceedings, (b) code of ethics/conduct for arbitrators, and (c) possible work on reform of investor-State dispute settlement system, on its agenda for further consideration at its next session. It further requested that the Secretariat, within its existing resources, continue to update and conduct preparatory work on all the topics so that the Commission would be in a position to make an informed decision whether to mandate its Working Group II to undertake work in any of the topics, following the current work on the enforcement of settlement agreements resulting from conciliation (see para. 195 above).

351. In addition, it was agreed that the Working Group should be referred to as Working Group II (Dispute Settlement), as the scope of its work was not necessarily limited to arbitration and conciliation.

3. Online dispute resolution

352. In light of the finalization and adoption of the UNCITRAL Technical Notes on Online Dispute Resolution (see para. 217 above), the Commission agreed that no future legislative activity should be planned on the topic.

4. Electronic commerce

353. The Commission recalled the summary of its discussion of the ongoing and future work in the area of electronic commerce (see paras. 225 to 237 above). After discussion, it reaffirmed the mandate given to Working Group IV to complete the preparation of the draft Model Law on Electronic Transferable Records and the accompanying explanatory note, and to consider the topics of identity management and trust services as well as of cloud computing upon completion of work on the draft Model Law (see para. 235 above).

5. Insolvency

354. The Commission recalled the summary of its discussion of the ongoing and future work in the area of insolvency (see paras. 241-247 above). After discussion, it

reaffirmed the mandate given to Working Group V to continue work on the following three topics: (a) facilitating the cross-border insolvency of multinational enterprise groups; (b) obligations of directors of enterprise group companies in the period approaching insolvency; and (c) recognition and enforcement of insolvency-related judgments (see para. 241 above). In addition, the Commission recalled the mandate given to Working Group V related to insolvency of MSMEs (see para. 246 above).

6. Security interests

355. The Commission noted that it had finalized and adopted the UNCITRAL Model Law on Secured Transactions (see para. 119 above) and recalled the summary of its discussion on the ongoing, planned and possible future work in the area of security interests (see paras. 120-128 above).

356. After discussion, the Commission reaffirmed the mandate given to Working Group VI to complete its work on the preparation of the draft Guide to Enactment during its next two sessions and submit the draft Guide to Enactment for consideration and adoption by the Commission at its next session (see para. 122 above). It was reaffirmed that, if the Working Group completed its work in less than two sessions, it could use the time remaining to discuss its future work in a session or in a colloquium to be organized by the Secretariat. It was further agreed that the Secretariat could seek, within its existing resources, to hold a colloquium to discuss future work on security interests (see para. 122 above) in addition to the two sessions devoted to Working Group VI.

357. It also reaffirmed the decision to retain on its future work agenda the preparation of a contractual guide on secured transactions and a uniform law text on intellectual property licensing (see para. 124 above) and to also add to its future work agenda the following topics: (a) the question whether the Model Law and the draft Guide to Enactment might need to be expanded to address matters related to secured finance to MSMEs; (b) the question whether any future work on a contractual guide on secured transactions should discuss contractual issues of concern to MSMEs (e.g. transparency issues); (c) any question that might not have already been addressed in the area of warehouse receipt financing (e.g. the negotiability of warehouse receipts); and (d) the question whether disputes arising from security agreements could be resolved through ADR mechanisms (see para. 125 above).

7. Public procurement and infrastructure development

358. As regards possible work in the areas of public procurement and infrastructure development, the Commission took note of the proposals set out in document A/CN.9/889. As regards public-private partnerships (PPPs), the Commission recalled its instructions to the Secretariat at the forty-eighth session to continue to follow developments in PPPs to advance preparations should the topic eventually be taken up, and to report further to the Commission at the current session.[109]

[109] Ibid., *Seventieth Session, Supplement No. 17* (A/70/17), para. 363.

359. The view was expressed that the proposed future work on public procurement as well as on PPPs as set out in document A/CN.9/889 did not deserve work at the working group level and that there was no longer the need to retain those topics on the agenda of the Commission. In support of that view, it was stated that issues relating to PPPs were dealt with by other organizations, the topics were not ripe enough for harmonization as relevant practices were still developing and that resources available should be allocated to more urgent ongoing work, including the preparation of the Congress (see chapter XVI below). Concerns were also expressed with regard to the feasibility of work. Accordingly, it was suggested that the topics could be set aside for the time being and revisited when concrete subjects of interest and feasible projects were identified.

360. On the other hand, it was argued that the topic of PPPs should be retained on the agenda of the Commission particularly due to its importance for developing countries. It was mentioned that quite a number of infrastructure development projects in those countries were conducted in the framework of PPPs and that work by UNCITRAL could provide ample guidance. It was suggested that work could focus on specific topics relating to PPPs including those mentioned in document A/CN.9/889 and that updating of the 2000 UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects[110] with the assistance of experts could be a starting point, and might offer an opportunity to better identify specific topics for possible future work. In that context, differing views were expressed on whether the work should be carried out at the working group level.

361. As regards the proposal for future work on the topic of suspension and debarment in public procurement, it was suggested that the Secretariat should continue to monitor developments in that field and should report periodically thereon to the Commission.

362. After discussions, it was generally felt that the topics relating to public procurement and infrastructure development were of continued importance, while it would be premature to engage in any type of legislative work. It was agreed that the Secretariat should continue to monitor developments in those areas, particularly with regard to suspension and debarment in public procurement. With regard to PPPs, it was agreed that the Secretariat should consider updating where necessary all or parts of the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, involving experts. Finally, it was agreed that the Secretariat should also continue to promote UNCITRAL texts in the area of public procurement, most importantly the Model Law on Public Procurement (2011).[111] In that context, it was highlighted that the above-mentioned activities should be undertaken taking into account the resources available to the Secretariat.

8. Possible colloquium on updating development on commercial fraud

363. The Commission considered a proposal by the Institute of International Banking Law & Practice and the International Law Institute to hold a two-day colloquium for updating developments on commercial fraud. It was suggested that the colloquium could provide the opportunity for experts to discuss developments

[110] United Nations publication, Sales No. E.01.V.4 (A/CN.9/SER.B/4).

[111] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), annex I.

and the successes and adequacy of efforts to combat commercial fraud. It was further suggested that areas for discussion could include revisiting the Secretariat informational note "Recognizing and Preventing Commercial Fraud: Indicators of Commercial Fraud". Lastly, it was suggested that the colloquium should be conducted in cooperation with the United Nations Office on Drugs and Crime (UNODC), if possible.

364. In response, it was questioned whether the topic of commercial fraud required additional consideration by the Commission, particularly as it dealt with criminal aspects and as the "Recognizing and Preventing Commercial Fraud: Indicators of Commercial Fraud" published by the Secretariat in 2013 was still relevant. After discussion, it was agreed that no resources should be allocated for that purpose. The Commission, however, requested the Secretariat to liaise with the Institute of International Banking Law & Practice and the International Law Institute, should those organizations consider holding a conference to address those topics, which might be reported to the Commission at a future session.

9. Allocation of conference resources

365. With regard to the two weeks of conference time that were available due to the conclusion of work in the area of ODR by Working Group III, the Commission agreed that the Secretariat should consider allocating the two weeks for additional work by Working Group II in the second half of 2016 and by Working Groups I and V in the first half of 2017. The Secretariat was requested to consider all possible options, including possibly sharing of the one-week session by two different Working Groups, which might facilitate discussion of the relevant topics and having back-to-back sessions. The Secretariat was further requested to explore the possibility of holding a colloquium to discuss future work on secured transactions. (For the dates agreed to be allocated to Working Groups I, II and V before the fiftieth session of the Commission, in 2017, see para. 394 below.)

B. Support activities

366. The Commission expressed its appreciation for the support activities described in documents A/CN.9/872, A/CN.9/873, A/CN.9/874, A/CN.9/875, A/CN.9/876, A/CN.9/877, A/CN.9/882 and A/CN.9/883, as considered earlier in the current session (see chapters X to XIV of this report).

367. The Commission recalled that it had emphasized the importance of support activities and the need to encourage such activities at the global and regional levels through the Secretariat, through the expertise available in the Working Groups and the Commission, through member States and through partnering arrangements with relevant international organizations, as well as promoting increased awareness of UNCITRAL's texts in these organizations and within the United Nations system.[112] After discussion, the Commission reaffirmed its request to the Secretariat to continue with those activities to the extent that its resources permitted.[113]

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[112] Ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), paras. 263-265.

[113] Ibid., *Seventieth Session, Supplement No. 17* (A/70/17), para. 365.

XVI. Congress 2017

368. The Commission recalled its instruction to the Secretariat to commence preparations for a Congress to commemorate UNCITRAL's fiftieth anniversary.[114] The Commission heard that the Secretariat had established a dedicated web page to publicise the event,[115] and that a Call for Papers had been issued and posted on the web page in June 2016.

369. It was noted that the Congress would be held during the first week of the Commission's fiftieth session in 2017, from 4-6 July, in Vienna.

370. The objectives of the Congress, it was recalled, were to discuss technical issues and to raise awareness of UNCITRAL and its potential to support cross-border commerce. The Commission noted that it had been proposed by consulted stakeholders that the Congress could seek to identify new areas of research and potential legislative activity for UNCITRAL, including (but not limited to): the development of the cross-border digital economy; finance in international trade; access to global supply chains and inputs (credit, transport, infrastructure); exploitation of global public goods; and dispute resolution in sectors such as climate disputes, and resource disputes.

371. The Commission heard that, in addition, consulted stakeholders suggested that the Congress would consider ways to enhance UNCITRAL's role in coordinating and cooperating in relevant work of other organizations, including in treaty-making and methods of legal harmonization. In that regard, the hope was expressed that participants would present ongoing commercial legal reform activities at the national and regional level, and discuss potential contributions to support trade law reform.

372. The Secretariat was urged to set a flexible and broad-ranging agenda, which would include an overview of UNCITRAL's existing and historical activities, and to take active steps to identify possible speakers and themes for discussion. The potential sensitivity of some possible topics, it was noted, indicated that a careful consideration of scope and manner of presentation would be necessary.

373. It was also noted that States would be consulted on the draft programme through the note verbale once the Call for Papers had closed, in the autumn of 2016.

XVII. Relevant General Assembly resolutions

374. The Commission took note of General Assembly resolution 70/115 of 14 December 2015 on the report of the United Nations Commission on International Trade Law on the work of its forty-eighth session, adopted on the recommendation of the Sixth Committee.

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[114] Ibid., para. 366.

[115] www.uncitral.org/uncitral/en/commission/colloquia/50th-anniversary.html.

XVIII. Other business

A. Entitlement to summary records

375. The Commission recalled that at its forty-fifth session, in 2012, it decided, while not relinquishing its entitlement to summary records under General Assembly resolution 49/221, to request that digital recordings continue to be provided at its forty-sixth and forty-seventh sessions, in 2013 and 2014, on a trial basis, in addition to summary records, as was done for the forty-fifth session.[116] The Commission also recalled that, at its forty-seventh and forty-eighth sessions, in 2014 and 2015, respectively, the Commission assessed the experience of using digital recordings and on the basis of that assessment decided to prolong the practice of providing to UNCITRAL digital recordings in parallel with summary records.[117]

376. At the current session, the Commission again assessed its experience with the use of digital recordings in the United Nations generally and in UNCITRAL specifically, on the basis of an oral report by the Secretariat. The Commission's attention was brought to General Assembly resolution 70/9 on the pattern of conferences. In that resolution, the General Assembly noted the increased use of digital recordings by intergovernmental bodies, including UNCITRAL and the United Nations Industrial Development Organization, and requested the Secretary-General to continue to report to the General Assembly in that regard. At the same time, the Assembly reiterated that the further expansion of transition from verbatim and summary records to digital recordings of meetings in the six official languages of the Organization as a cost-saving measure would require consideration, including of its legal, financial and human resources implications, by the General Assembly and full compliance with the relevant resolutions of the Assembly.

377. In light of that resolution, in particular its paragraph 90 that stressed that verbatim and summary records remained the only official records of the meetings of United Nations bodies, the Commission was of the view that the transition from summary records to digital recordings of UNCITRAL meetings in the six official languages of the Organization was not currently possible. The Commission requested the Secretariat to prolong the practice of providing to UNCITRAL digital recordings in parallel with summary records and was assured that there were no technical obstacles for that. The Commission reiterated its view that summary records would have to be provided to the Commission until no obstacles existed to making the transition from summary records to digital recordings. The Commission requested the Secretariat to inform the Commission when developments as regards the use of digital recordings in the United Nations so warrant.

B. Internship programme

378. The Commission recalled the considerations taken by its secretariat in selecting candidates for internship and noted with satisfaction the continuing

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[116] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 249.

[117] Ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), paras. 271-276; and ibid., *Seventieth Session, Supplement No. 17* (A/70/17), paras. 368-370.

positive implications of changes introduced in 2013 and 2014 in the United Nations internship programme (selection procedures and eligibility requirements) on the pool of eligible and qualified candidates for internship from under-represented countries, regions and language groups.[118]

379. The Commission was informed that, since the Secretariat's oral report to the Commission at its forty-eighth session, in July 2015,[119] twelve new interns had undertaken an internship with the UNCITRAL secretariat in Vienna. Most interns were coming from developing countries and countries in transition.

C. Evaluation of the role of the Secretariat in facilitating the work of the Commission

380. The Commission recalled that at its fortieth session, in 2007,[120] it had been informed of the programme budget for the biennium 2008-2009, which listed among the expected accomplishments of the Secretariat "facilitating the work of UNCITRAL". The performance measure for that expected accomplishment was the level of satisfaction of UNCITRAL with the services provided, as evidenced by a rating on a scale ranging from 1 to 5 (5 being the highest rating).[121] At that session, the Commission had agreed to provide feedback to the Secretariat.

381. From the fortieth session until the forty-fifth session of the Commission, in 2012, the feedback was provided by States attending the annual sessions of UNCITRAL in response to the questionnaire circulated by the Secretariat by the end of the session. That practice had changed since the Commission's forty-fifth session, in 2012, partly because of the need to solicit more responses: instead of an in-session questionnaire, the Secretariat started circulating to all States closer to the start of an annual session of the Commission a note verbale with the request to indicate, by filling-in the evaluation form enclosed to the note verbale, their level of satisfaction with the services provided to UNCITRAL by the UNCITRAL secretariat during a given session. As regards the forty-eighth session of UNCITRAL such a note verbale was circulated to all Member States of the United Nations on 27 May 2016 and the period covered was indicated from the start of the forty-eighth session of UNCITRAL (29 June 2015).

382. The Commission was informed that the request by a note verbale and an additional request during the current session of UNCITRAL had elicited 17 responses and that the level of satisfaction with the services provided to UNCITRAL by the UNCITRAL secretariat, as indicated in those responses, remained high (10 States that responded gave 5 out of 5 and 7 States that responded gave 4 out of 5). The Commission heard that States in their statements to the Sixth Committee of the General Assembly on the report of the Commission often included their views on the work of the UNCITRAL secretariat in servicing the

[118] Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 328-330; ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 344; and ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), paras. 277 and 278.

[119] Ibid., *Seventieth Session, Supplement No. 17* (A/70/17), para. 372.

[120] Ibid., *Sixty-second Session, Supplement No. 17* (A/62/17), part one, para. 243.

[121] A/62/6 (Sect. 8) and Corr.1, table 8.19 (d).

Commission. Such statements did not lend themselves to easy quantitative assessment.

383. The Commission took note of the concern that the level of responses to the request for evaluation remained low. There was general agreement that receiving feedback from more States about the UNCITRAL secretariat's performance would be necessary to allow for a more objective evaluation of the role of the Secretariat, as was required for budgetary and other purposes.

384. The Commission expressed appreciation to the Secretariat for its work in servicing UNCITRAL, highlighting in particular the quality of documents produced and responsiveness to requests of the Commission.

D. Methods of work

385. The Commission had before it proposals by delegations of Israel, Switzerland and the United States regarding its methods of work. When introducing their proposals, the proponents referred to the insufficient representation of States during the discussion of policy issues at annual sessions of UNCITRAL. They expressed their view that some adjustments in the planning and organization of annual sessions of UNCITRAL could facilitate the participation of States, especially from small States, not only during those parts of a session at which specific texts were reviewed for finalization and adoption, but also during more general policy discussions. Advance planning for more structured discussions, a clearer scheduling of agenda items, and the allotment of specific time periods for their consideration were brought forward as possible steps to be considered to that end.

386. Considering that the proposals were made available late in the session, a number of delegates reserved their position until they had had a chance to consult further. Concerns were expressed that the proposals failed to take into account various considerations that would impact their implementation, including the applicable rules on utilization of conference services, and on simultaneous distribution of documents in the six official languages of the United Nations. The implementation of some proposals, such as the earlier election of the bureau of the Commission and the earlier nomination of members of delegations to sessions of UNCITRAL, was considered to be within the exclusive prerogative of States, rather than practices that could be changed by the Secretariat or the Commission itself. Agreement on some of those issues necessitated consultations among States in regional groups. It was considered equally inappropriate or impractical to assume that the Secretariat should exercise much discretion as regards the removal, addition or prioritizing of agenda items and pre-allotting time for their consideration. Retaining flexibility was considered essential especially in the light of sovereign rights of States to speak and to make proposals at United Nations meetings.

387. Regarding the proposal that introduction of issues by the Secretariat during the sessions should be dispensed with to expedite deliberations by the Commission, at least in respect of issues already discussed in documents before the Commission, the proponents were urged to consider the point of view of various delegations, including those that did not work with the English version of documents (and therefore would appreciate a detailed introduction by the Secretariat, particularly in case of late issuance of documents), or that could not afford to participate in

working groups, but still wished to have a say in the finalization of texts by the Commission. While the importance of taking those considerations into account was generally acknowledged, a widely shared view was also expressed that annual sessions of the Commission should not be used as substitutes for additional working group sessions. It was recalled that texts submitted by working groups for adoption by the Commission were expected to be sufficiently mature to avoid protracted discussion, especially at more than one annual session of the Commission.

388. Regarding the work programme of the Commission, the value of suggestions that might be made by experts on topics considered by working groups was acknowledged. However, the prevailing view was that the discussion of future work by the Commission should be scheduled for decisions to take place at the end of each session of the Commission. Such decisions should not be made within the working groups or during the finalization of texts submitted to the Commission. As to the duration of Commission sessions, preference was expressed for holding shorter sessions (i.e. to avoid three-week sessions). However, it was widely acknowledged that the workload of the Commission might justify flexibility, including the possibility of holding three-week sessions. It was recalled that the Commission usually had a chance to approve the timing and duration of its next session one year in advance.

389. About the use of online platforms by the Secretariat for intersessional consultations among States, a reservation was expressed, as States themselves should have a chance to consider how those platforms would work in compliance with various applicable rules of the United Nations. The scarcity of resources available to the UNCITRAL secretariat, including the lack of dedicated resources for IT specialists and IT services, was recalled.

390. Some support was expressed for continuing the discussion of the proposals at a future session. The prevailing view was that the issues raised in the proposals were more appropriate for informal discussion among States, and between States and the Secretariat.

391. After discussion, the Commission decided to take note of the proposals and invited States to consult informally, among themselves and with the Secretariat, on possible follow-up. Should any issue require a formal decision by the Commission, it could be brought to its attention at a future session. The Secretariat was invited to consider any technical adjustment to the provisional agenda and any other administrative measure within its control, to facilitate participation of all States during the entire duration of the session. The Secretariat was reminded of the desirability of avoiding United Nations official holidays, if possible, when scheduling sessions.

XIX. Date and place of future meetings

392. At its thirty-sixth session, in 2003, the Commission agreed that: (a) working groups should normally meet for a one-week session twice a year; (b) extra time, if required, could be allocated from the unused entitlement of another working group provided that such arrangement would not result in the increase of the total number of 12 weeks of conference services per year currently allotted to sessions of all six working groups of the Commission; and (c) if any request by a working group

for extra time would result in the increase of the 12-week allotment, it should be reviewed by the Commission, with proper justification being given by that working group regarding the reasons for which a change in the meeting pattern was needed.[122]

A. Fiftieth session of the Commission

393. The Commission approved the holding of its fiftieth session in Vienna from 3 to 21 July 2017. The Commission confirmed that UNCITRAL Congress 2017 would be held in conjunction with its fiftieth session from 4 to 6 July 2017 (see para. 369 above).

B. Sessions of working groups

1. Sessions of working groups between the forty-ninth and fiftieth sessions of the Commission

394. The Commission approved the following schedule of meetings for its working groups:

(a) Working Group I (MSMEs) would hold its twenty-seventh session in Vienna, from 3 to 7 October 2016, and the twenty-eighth session in New York, from 1 to 9 May 2017;

(b) Working Group II (Dispute Settlement) would hold its sixty-fifth session in Vienna, from 12 to 23 September 2016 (13 September is a United Nations official holiday in Vienna), and its sixty-sixth session in New York, from 6 to 10 February 2017;

(c) Working Group IV (Electronic Commerce) would hold its fifty-fourth session in Vienna, from 31 October to 4 November 2016, and its fifty-fifth session in New York, from 24 to 28 April 2017;

(d) Working Group V (Insolvency Law) would hold its fiftieth session in Vienna, from 12 to 16 December 2016, and its fifty-first session in New York, from 10 to 19 May 2017;

(e) Working Group VI (Security Interests) would hold its thirtieth session in Vienna, from 5 to 9 December 2016, and its thirty-first session in New York, from 13 to 17 February 2017.

2. Sessions of working groups in 2017 after the fiftieth session of the Commission

395. The Commission noted that tentative arrangements had been made for working group meetings in 2017 after its fiftieth session, subject to the approval by the Commission at that session:

(a) Working Group I (MSMEs) would hold its twenty-ninth session in Vienna from 2 to 6 October 2017;

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[122] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 17* (A/58/17), para. 275.

(b) Working Group II (Dispute Settlement) would hold its sixty-seventh session in Vienna from 11 to 15 September 2017;

(c) Working Group IV (Electronic Commerce) would hold its fifty-sixth session in Vienna from 16 to 20 October 2017;

(d) Working Group V (Insolvency Law) would hold its fifty-second session in Vienna from 20 to 24 November 2017;

(e) Working Group VI (Security Interests) would hold its thirty-second session in Vienna from 11 to 15 December 2017.

396. The Secretariat has reserved conference services in Vienna during the week of 27 November to 1 December 2017 for a session of Working Group III or another working group or other conference needs of UNCITRAL.

Annex I

Technical Notes on Online Dispute Resolution

Section I — Introduction

Overview of online dispute resolution

1. In tandem with the sharp increase of online cross-border transactions, there has been a need for mechanisms for resolving disputes which arise from such transactions.

2. One such mechanism is online dispute resolution ("ODR"), which can assist the parties in resolving the dispute in a simple, fast, flexible and secure manner, without the need for physical presence at a meeting or hearing. ODR encompasses a broad range of approaches and forms (including but not limited to ombudsmen, complaints boards, negotiation, conciliation, mediation, facilitated settlement, arbitration and others),[1] and the potential for hybrid processes comprising both online and offline elements. As such, ODR represents significant opportunities for access to dispute resolution by buyers and sellers concluding cross-border commercial transactions, both in developed and developing countries.

Purpose of the Technical Notes

3. The purpose of the Technical Notes is to foster the development of ODR and to assist ODR administrators, ODR platforms, neutrals, and the parties to ODR proceedings.

4. The Technical Notes reflect approaches to ODR systems that embody principles of impartiality, independence, efficiency, effectiveness, due process, fairness, accountability and transparency.

5. The Technical Notes are intended for use in disputes arising from cross-border low-value sales or service contracts concluded using electronic communications. They do not promote any practice of ODR as best practice.

Non-binding nature of the Technical Notes

6. The Technical Notes are a descriptive document. They are not intended to be exhaustive or exclusive, nor are they suitable to be used as rules for any ODR proceeding. They do not impose any legal requirement binding on the parties or any persons and/or entities administering or enabling an ODR proceeding, and do not imply any modification to any ODR rules that the parties may have selected.

[1] The order of the list of approaches or forms in brackets is presented in increasing order of formality, reflecting the approach taken in the description of commonly-used, methods for settling disputes contained in UNCITRAL's Legislative Guide on Privately Financed Infrastructure Projects (2000), available at www.uncitral.org/uncitral/uncitral_texts/procurement_infrastructure.html. Furthermore, the terms are illustrative only, relative formality may vary from system to system, and relevant processes in some jurisdictions may be known by more than one of the terms contained in the list itself.

Section II — Principles

7. The principles that underpin any ODR process include fairness, transparency, due process and accountability.

8. ODR may assist in addressing a situation arising out of cross-border e-commerce transactions, namely the fact that traditional judicial mechanisms for legal recourse may not offer an adequate solution for cross-border e-commerce disputes.

9. ODR ought to be simple, fast and efficient, in order to be able to be used in a "real world setting", including that it should not impose costs, delays and burdens that are disproportionate to the economic value at stake.

Transparency

10. It is desirable to disclose any relationship between the ODR administrator and a particular vendor, so that users of the service are informed of potential conflicts of interest.

11. The ODR administrator may wish to publish anonymized data or statistics on outcomes in ODR processes, in order to enable parties to assess its overall record, consistent with applicable principles of confidentiality.

12. All relevant information should be available on the ODR administrator's website in a user-friendly and accessible manner.

Independence

13. It is desirable for the ODR administrator to adopt a code of ethics for its neutrals, in order to guide neutrals as to conflicts of interest and other rules of conduct.

14. It is useful for the ODR administrator to adopt policies dealing with identifying and handling conflicts of interest.

Expertise

15. The ODR administrator may wish to implement comprehensive policies governing selection and training of neutrals.

16. An internal oversight/quality assurance process may help the ODR administrator to ensure that a neutral conforms with the standards it has set for itself.

Consent

17. The ODR process should be based on the explicit and informed consent of the parties.

Section III — Stages of an ODR proceeding

18. The process of an ODR proceeding may consist of stages including: negotiation; facilitated settlement; and a third (final) stage.

19. When a claimant submits a notice through the ODR platform to the ODR administrator (see section VI below), the ODR administrator informs the respondent of the existence of the claim and the claimant of the response. The first stage of proceedings — a technology-enabled negotiation — commences, in which the claimant and respondent negotiate directly with one another through the ODR platform.

20. If that negotiation process fails (i.e. does not result in a settlement of the claim), the process may move to a second, "facilitated settlement" stage (see paras. 40-44 below). In that stage of ODR proceedings, the ODR administrator appoints a neutral (see para. 25 below), who communicates with the parties in an attempt to reach a settlement.

21. If facilitated settlement fails, a third and final stage of ODR proceedings may commence, in which case the ODR administrator or neutral may inform the parties of the nature of such stage.

Section IV — Scope of ODR process

22. An ODR process may be particularly useful for disputes arising out of cross-border, low-value e-commerce transactions. An ODR process may apply to disputes arising out of both a business-to-business as well as business-to-consumer transactions.

23. An ODR process may apply to disputes arising out of both sales and service contracts.

Section V — ODR definitions, roles and responsibilities, and communications

24. Online dispute resolution, or "ODR", is a "mechanism for resolving disputes through the use of electronic communications and other information and communication technology". The process may be implemented differently by different administrators of the process, and may evolve over time.

25. As used herein a "claimant" is the party initiating ODR proceedings and the "respondent" the party to whom the claimant's notice is directed, in line with traditional, offline, alternative dispute resolution nomenclature. A neutral is an individual that assists the parties in settling or resolving the dispute.

26. ODR requires a technology-based intermediary. In other words, unlike offline alternative dispute resolution, an ODR proceeding cannot be conducted on an ad hoc basis involving only the parties to a dispute and a neutral (that is, without an administrator). Instead, to permit the use of technology to enable a dispute resolution process, an ODR process requires a system for generating, sending, receiving, storing, exchanging or otherwise processing communications in a manner that ensures data security. Such a system is referred to herein as an "ODR platform".

27. An ODR platform should be administered and coordinated. The entity that carries out such administration and coordination is referred to herein as the "ODR

administrator". The ODR administrator may be separate from or part of the ODR platform.

28. In order to enable ODR communications, it is desirable that both the ODR administrator and the ODR platform be specified in the dispute resolution clause.

29. The communications that may take place during the course of proceedings have been defined as "any communication (including a statement, declaration, demand, notice, response, submission, notification or request) made by means of information generated, sent, received or stored by electronic, magnetic, optical or similar means."

30. It is desirable that all communications in ODR proceedings take place via the ODR platform. Consequently, both the parties to the dispute, and the ODR platform itself, should have a designated "electronic address". The term "electronic address" is defined in other UNCITRAL texts.

31. To enhance efficiency it is desirable that the ODR administrator promptly:

(a) Acknowledge receipt of any communication by the ODR platform;

(b) Notify parties of the availability of any communication received by the ODR platform; and

(c) Keep the parties informed of the commencement and conclusion of different stages of the proceedings.

32. In order to avoid loss of time, it is desirable that a communication be deemed to be received by a party when the administrator notifies that party of its availability on the platform; deadlines in the proceedings would run from the time the administrator has made that notification. At the same time, it is desirable that the ODR administrator be empowered to extend deadlines, in order to allow for some flexibility when appropriate.

Section VI — Commencement of ODR proceedings

33. In order that an ODR proceeding may begin, it is desirable that the claimant provide to the ODR administrator a notice containing the following information:

(a) The name and electronic address of the claimant and of the claimant's representative (if any) authorized to act for the claimant in the ODR proceedings;

(b) The name and electronic address of the respondent and of the respondent's representative (if any) known to the claimant;

(c) The grounds on which the claim is made;

(d) Any solutions proposed to resolve the dispute;

(e) The claimant's preferred language of proceedings; and

(f) The signature or other means of identification and authentication of the claimant and/or the claimant's representative.

34. ODR proceedings may be deemed to have commenced when, following a claimant's communication of a notice to the ODR administrator, the ODR administrator notifies the parties that the notice is available at the ODR platform.

35. It is desirable that the respondent communicate its response to the ODR administrator within a reasonable time of being notified of the availability of the claimant's notice on the ODR platform, and that the response include the following elements:

(a) The name and electronic address of the respondent and the respondent's representative (if any) authorized to act for the respondent in the ODR proceedings;

(b) A response to the grounds on which the claim is made;

(c) Any solutions proposed to resolve the dispute;

(d) The signature or other means of identification and authentication of the respondent and/or the respondent's representative; and

(e) Notice of any counterclaim containing the grounds on which the counterclaim is made.

36. As much as is possible, it is desirable that both the notice and response be accompanied by all documents and other evidence relied upon by each party, or contain references to them. In addition, to the extent that a claimant is pursuing any other legal remedies, it is desirable that such information also be provided with the notice.

Section VII — Negotiation

37. The first stage may be a negotiation, conducted between the parties via the ODR platform.

38. The first stage of proceedings may commence following the communication of the respondent's response to the ODR platform and:

(a) Notification thereof to the claimant; or

(b) Failing a response, the lapse of a reasonable period of time after the notice has been communicated to the respondent.

39. It is desirable that, if the negotiation does not result in a settlement within a reasonable period of time, the process proceed to the next stage.

Section VIII — Facilitated settlement

40. The second stage of ODR proceedings may be facilitated settlement, whereby a neutral is appointed and communicates with the parties to try to achieve a settlement.

41. That stage may commence if negotiation via the platform fails for any reason (including non-participation or failure to reach a settlement within a reasonable period of time), or where one or both parties to the dispute request to move directly to the next stage of proceedings.

42. Upon commencement of the facilitated settlement stage of proceedings, it is desirable that the ODR administrator appoint a neutral, and notify the parties of that appointment, and provide certain details about the identity of the neutral as described in paragraph 46 below.

43. In the facilitated settlement stage, it is desirable that the neutral communicate with the parties to try to achieve a settlement.

44. If a facilitated settlement cannot be achieved within a reasonable period of time, the process may move to a final stage.

Section IX — Final stage

45. If the neutral has not succeeded in facilitating the settlement, it is desirable that the ODR administrator or neutral informs the parties of the nature of the final stage, and of the form that it might take.

Section X — Appointment, powers and functions of the neutral

46. To enhance efficiency and reduce costs, it is preferable that the ODR administrator appoint a neutral only when a neutral is required for a dispute resolution process in accordance with any applicable ODR rules. At the point in an ODR proceeding at which a neutral is required for the dispute resolution process, it is desirable that the ODR administrator "promptly" appoint the neutral (i.e., generally at the commencement of the facilitated settlement stage of proceedings). Upon appointment, it is desirable that the ODR administrator promptly notify the parties of the name of the neutral and any other relevant or identifying information in relation to that neutral.

47. It is desirable that neutrals have the relevant professional experience as well as dispute resolution skills to enable them to deal with the dispute in question. However, subject to any professional regulation, ODR neutrals need not necessarily be qualified lawyers.

48. With regard to the appointment and functions of neutrals, it is desirable that:

(a) The neutral's acceptance of his or her appointment operates to confirm that he or she has the time necessary to devote to the process;

(b) The neutral be required to declare his or her impartiality and independence and disclose at any time any facts or circumstances that might give rise to likely doubts as to his or her impartiality or independence;

(c) The ODR system provides parties with a method for objecting to the appointment of a neutral;

(d) In the event of an objection to an appointment of a neutral, the ODR administrator be required to make a determination as to whether the neutral shall be replaced;

(e) There be only one neutral per dispute appointed at any time for reasons of cost efficiency;

(f) A party be entitled to object to the neutral receiving information generated during the negotiation period; and

(g) If the neutral resigns or has to be replaced during the course of the ODR proceedings, the ODR administrator be required to appoint a replacement, subject to the same safeguards as set out during the appointment of the initial neutral.

49. In respect of the powers of the neutral, it is desirable that:

(a) Subject to any applicable ODR rules, the neutral be enabled to conduct the ODR proceedings in such a manner as he or she considers appropriate;

(b) The neutral be required to avoid unnecessary delay or expense in the conduct of the proceedings;

(c) The neutral be required to provide a fair and efficient process for resolving disputes;

(d) The neutral be required to remain independent, impartial and treat both parties equally throughout the proceedings;

(e) The neutral be required to conduct proceedings based on such communications as are before the neutral during the proceedings;

(f) The neutral be enabled to allow the parties to provide additional information in relation to the proceedings; and

(g) The neutral be enabled to extend any deadlines set out in any applicable ODR rules for a reasonable time.

50. While the process for appointment of a neutral for an ODR proceeding is subject to the same due process standards that apply to that process in an offline context, it may be desirable to use streamlined appointment and challenge procedures in order to address the need for ODR to provide a simple, time-, and cost-effective alternative to traditional approaches to dispute resolution.

Section XI — Language

51. Technology tools available in ODR can offer a great deal of flexibility regarding the language used for the proceeding. Even where an ODR agreement or ODR rules specify a language to be used in proceedings, it is desirable that a party to the proceedings be able to indicate in the notice or response whether it wishes to proceed in a different language, so that the ODR administrator can identify other language options that the parties may select.

Section XII — Governance

52. It is desirable for guidelines (and/or minimum requirements) to exist in relation to the conduct of ODR platforms and administrators.

53. It is desirable that ODR proceedings be subject to the same confidentiality and due process standards that apply to dispute resolution proceedings in an offline context, in particular independence, neutrality and impartiality.

Annex II

Guidance Note on Strengthening United Nations Support to States, Upon Their Request, to Implement Sound Commercial Law Reforms

A. About this Guidance Note

1. This Guidance Note provides the guiding principles and framework for strengthening United Nations support to States, upon their request, to implement sound commercial law reforms on the basis of internationally accepted standards. It is framed within the United Nations mandate to promote higher standards of living, full employment, and conditions of economic and social progress and development, as well as solutions of international economic, social and related problems. It is a contribution to the implementation of the international development agenda and General Assembly resolutions calling for: (a) enhanced technical assistance and capacity-building in the international commercial law field; (b) better integration of the work in that field in the broader agenda of the United Nations; (c) greater coordination and coherence among the United Nations entities and with donors and recipients; (d) greater evaluation of the effectiveness of such activities; (e) measures to improve the effectiveness of capacity-building activities; and (f) placement of national perspectives at the centre of United Nations assistance programmes.

2. This Guidance Note is relevant to all United Nations departments, offices, funds, agencies and programmes as well as other donors that deal with: (a) mobilizing finance for sustainable development; (b) reducing or removing legal obstacles to the flow of international trade and achieving international and/or regional economic integration; (c) private sector development; (d) justice sector reforms; (e) increasing the resilience of economies to economic crisis; (f) good governance, including public procurement reforms and e-governance; (g) empowerment of the poor; (h) preventing and combating economic crimes through education (e.g. commercial fraud, forgery and falsification); (i) addressing the root causes of conflicts triggered by economic factors; (j) addressing post-conflict economic recovery problems; (k) addressing specific problems with access to international trade by landlocked countries; and (l) domestic implementation of international obligations in the field of international commercial law and related areas.

B. Guiding principles

1. The United Nations work in the field of international commercial law as an integral part of the broader agenda of the United Nations

3. The establishment of sound rules furthering commercial relations is an important factor in economic development. This is because commercial decisions are taken not in isolation but in the context of all relevant factors, including the applicable legal framework.

4. The modern and harmonized international commercial law framework is the basis for rule-based commercial relations and an indispensable part of international

trade, bearing in mind the relevance of domestic law and domestic legal systems in this regard. In reducing or removing legal obstacles to the flow of international trade, especially those affecting developing countries, it also contributes significantly to universal economic cooperation among all States on a basis of equality, equity, common interest and respect for legality, to the elimination of discrimination in international trade and, thereby, to peace, stability and the well-being of all peoples. The implementation and effective use of such frameworks are also essential for advancing good governance, sustained economic development and the eradication of poverty and hunger. Accordingly, they may contribute to the achievement of the purposes of the United Nations Charter and those specified in the United Nations General Assembly resolution 2205 (XXI) of 17 December 1966 on the establishment of the United Nations Commission on International Trade Law (UNCITRAL).

5. For these reasons, the United Nations work in the field of international commercial law should be better integrated, where and as necessary, at the headquarters and country levels in United Nations operations in development, conflict-prevention, post-conflict-reconstruction and other appropriate contexts.

2. United Nations assistance to States, upon their request, with the assessment of local needs for commercial law reforms and their implementation

6. Commercial law constantly evolves in response to new business practices and global challenges. This necessitates the implementation of commercial law reforms that keep pace with those developments. States often request assistance with the assessment of the need for commercial law reforms and their implementation.

7. To achieve better integration of the United Nations work in the field of international commercial law in the broader agenda of the United Nations, United Nations entities operating on the ground should be able to respond to such requests. For that, they should be aware of standards, tools and expertise readily available in the United Nations system in the field of international commercial law. Guiding principle 5 below provides sources of information about such standards, tools and expertise and section C of this Guidance Note illustrates steps that may need to be taken to assist States with the assessment and implementation of commercial law reforms.

8. United Nations entities should promote the harmonization of the local legal framework regulating commercial relations with internationally accepted commercial law standards, where appropriate. Such harmonization would: (a) facilitate recognition, protection and enforcement of contracts and other binding commitments; (b) make commercial law more easily understandable to commercial parties; (c) promote uniform interpretation and application of international commercial law frameworks; and (d) provide legal certainty and predictability in order to enable parties to commercial transactions to take commercially reasonable decisions.

9. States also often request assistance with the assessment of the effectiveness of their mechanisms for adjudicating disputes and enforcing binding commitments in the context of trade and investment, in particular commercial arbitration and alternative dispute resolution mechanisms (jointly referred to in this Guidance Note as ADR). In this context, United Nations entities should be aware of the applicable

internationally accepted standards, compliance with which may help to ensure that such mechanisms operate on the basis of internationally recognized norms and are easily accessible, affordable, efficient and effective. Where ADR is promoted by a State as an option to seeking adjudication of commercial disputes in a neutral forum, United Nations entities should be aware that court reforms may be needed so as to equip the judiciary to efficiently and effectively support ADR.

3. United Nations role in assisting States, upon their request, to implement holistic and properly coordinated commercial law reforms

10. Laws and regulations governing commercial relations and the accompanying institutional framework are not purely technical matters. They embody particular policy preferences. They can produce political and social impacts, including gender-unbalanced impacts, in addition to the obvious, economic impacts.

11. Commercial law reforms should therefore involve close consultation and coordination among all relevant stakeholders, including non-governmental organizations (representing the general public), lawyers, legislators, judges, arbitrators and other legal practitioners, such as officials responsible for drafting legislation. In particular, the close link between policymaking and law-making and institutional reforms needs to be ensured.

12. Commercial law reform is strongly linked to international legal obligations. Involvement of international experts may be desirable to ensure consistency between domestic law and international obligations where risks of creating gaps or conflicts between the two exist. United Nations entities should also support and encourage cooperation and exchanges of good practices between States as an important means of promoting sound commercial law reform.

13. The proper coordination among United Nations entities themselves and between them and other donors, as well as domestic governmental departments, engaging in reform efforts should also be achieved. The results of coordination and cooperation gained at the country level must be preserved at the headquarters level and vice versa. Such coordination is essential in order to avoid duplication of efforts and promote efficiency, consistency and coherence in the modernization and harmonization of international commercial law.

4. United Nations support to States, upon their request, with building local capacity to effectively implement sound commercial law reforms

14. Adequate local capacity to enact, enforce, implement, apply and interpret sound commercial law frameworks is necessary for the expected benefits of rule-based commercial relations and international trade to accrue. Often States request international assistance with building the required local capacity.

15. The effective way to provide such assistance is through technical cooperation, training and capacity-building sessions aimed at strengthening local expertise to draw on readily available international standards, tools and expertise for carrying out commercial law reforms at the country level. United Nations entities should support the organization of those and similar activities and facilitate participation of local experts therein.

16. In addition, active participation of domestic governmental and non-governmental stakeholders in international legislative forums such as UNCITRAL (see guiding principle 5) (at the level of both working groups and the Commission) can significantly contribute to the understanding of the benefits of using international legal instruments to facilitate commercial law reform. Such participation can allow stakeholders to gain familiarity with the drafting of international commercial law and the different modalities which can be later used domestically. It can also serve as a platform for exchange of best practices with counterparts from a wide and diverse professional and geographical background. Close coordination of a State position in various regional and international rule-formulating bodies active in the field of international commercial law helps to avoid the appearance of conflicting rules and interpretations in those bodies. All efforts should therefore be made by United Nations entities to support States in their endeavours to achieve representation of their position in a sustained and coordinated manner in UNCITRAL and other regional and international rule-formulating bodies active in the field of international commercial law.

17. Achieving transparent, consistent and predictable outcomes in jurisprudence on commercial law matters in compliance with the relevant international obligations of States[1] is important for rule-based commercial relations. Judges, arbitrators, law professors and other legal practitioners play primary roles in this regard. Their capacity to interpret international commercial law standards in a way that would promote uniformity in their application and the observance of good faith in international trade should also be a continuous concern. There are tools specifically designed by the United Nations for such purposes (see guiding principle 5). United Nations entities should promote their development and use.

5. UNCITRAL is the core legal body in the United Nations system in the field of international commercial law and as such should be relied upon by United Nations entities in their support to States, upon their request, to implement sound commercial law reforms

18. UNCITRAL is the law-making body of the United Nations system in the field of international commercial law. It is an intergovernmental forum composed of Member States elected by the General Assembly. Its composition is representative of the various geographic regions and the principal economic and legal systems. Additionally, intergovernmental organizations, professional associations and other non-governmental organizations with observer status participate in its work.

19. UNCITRAL standards represent what the international community considers at a given time to be the best international practice for regulating certain commercial transactions. They equip States with models and guidance to support sound commercial law reforms at lower costs. Reliance on such standards enhances the quality of enacted legislation in the long run and builds the confidence of the private sector, including foreign investors, in the ease of doing business in a country that adheres to them.

[1] E.g. the United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980), article 7. United Nations, *Treaty Series*, vol. 1489, No. 25567. Also available at www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG.html.

20. Most standards are adaptable to local circumstances and needs of commercial parties.[2] A particular feature of UNCITRAL model laws and similar instruments issued by other international organizations is that they can be used by States as a basis or inspiration for legislation that forms part of commercial law reform: they can be adapted to domestic circumstances, and States can select which provisions are most relevant to their legal systems.

21. In addition to internationally accepted commercial law standards, UNCITRAL provides readily available technical assistance, capacity-building and other tools, such as CLOUT,[3] digests of case law,[4] databases related to the implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, on 10 June 1958[5] (the New York Convention),[6] and other databases and publications,[7] that aim to facilitate the understanding and use of those standards and to disseminate information about modern legal developments, including case law, in the international commercial law field. Those tools are in particular indispensable in training judges, arbitrators, law professors and other legal practitioners on commercial law matters and to the legal empowerment of people in general.

22. The areas covered by UNCITRAL work are: (a) contracts (international sale of goods, international transport of goods, electronic commerce); (b) international commercial and investment dispute settlement (arbitration, conciliation, online dispute resolution (ODR) and investor-State dispute resolution); (c) public procurement and privately financed infrastructure projects; (d) international payments; (e) insolvency law; (f) security interests; (g) commercial fraud; and (h) developing an enabling legal environment for micro-, small and medium-sized enterprises.[8]

C. Operational framework

23. Sections below illustrate steps that may need to be taken by United Nations entities that are requested by States to assist with the assessment and implementation of commercial law reforms.

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[2] For the up-to-date list of the UNCITRAL standards, see www.uncitral.org/uncitral/en/uncitral_texts.html.

[3] www.uncitral.org/uncitral/en/case_law.html.

[4] www.uncitral.org/uncitral/en/case_law/digests.html.

[5] United Nations, *Treaty Series*, vol. 330, No. 4739. Also available at www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html.

[6] www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html.

[7] E.g. the recurrent publication on the judicial perspective on cross-border insolvency cases (www.uncitral.org/uncitral/uncitral_texts/insolvency/2011Judicial_Perspective.html), the Practice Guide on Cross-Border Insolvency Cooperation (www.uncitral.org/uncitral/en/uncitral_texts/insolvency/2009PracticeGuide.html), and Promoting confidence in electronic commerce: legal issues on international use of electronic authentication and signature methods (www.uncitral.org/pdf/english/texts/electcom/08-55698_Ebook.pdf).

[8] New areas of work may be added. For the most updated list, please contact the UNCITRAL secretariat at the addresses indicated in the end of this Guidance Note or check the UNCITRAL website (www.uncitral.org).

1. Legal framework

24. States may request technical assistance and capacity-building with their commercial law reform efforts, in particular with identification of local needs for commercial law reforms, with enactment of a law or with updating and modernizing existing rules on a particular commercial law subject. In response, the United Nations should endeavour to assist States with the following, bearing in mind that reform of the legal framework should remain a process which is country led, country owned and country managed:

(a) Preparing a structured workplan that would identify the goals and objectives of the different steps for commercial law reform (for both providing assistance and taking reform measures), set up a schedule, develop strategies to address the weaknesses or inadequacies of the different legislative norms or practices, appoint appropriate focal points to coordinate a specific reform initiative and allocate resources;

(b) Assessing the general commercial law framework and the status of its implementation in the State, e.g.: (i) whether the State is party to fundamental conventions in the commercial law field (e.g. the New York Convention), which will be conducive to other commercial law reforms; (ii) if yes, the status of their implementation; (iii) if not, measures to be taken to consider becoming a party; and (iv) whether the local commercial law framework is otherwise compliant with internationally accepted commercial law standards;

(c) In the context of a particular commercial law reform:

(i) Identifying an applicable internationally accepted commercial law standard and related readily available tools and expertise designed to facilitate its enactment;

(ii) Identifying all stakeholders relevant to the commercial law reform, including domestic reform constituencies, international experts, various donors working in the same or related field, etc., and appropriate focal points in each entity to coordinate a specific reform, in order to facilitate proper consultations with them, where necessary;

(iii) Preparing a comprehensive legislative package to accompany the adoption of a new law (e.g. other necessary laws, regulations, guidance and/or codes of conduct) and ensuring the proper expert assessment of the legislative package before the law is adopted.

2. State institutions involved in commercial law reforms

25. States may request technical assistance and capacity-building, in particular as regards:

(a) Development of capacity in various State institutions (parliamentary committees, ministries of justice, trade and economic development, public procurement agencies, monitoring and oversight bodies) to handle commercial law reforms and implement commercial law framework. Technical assistance and capacity-building in such cases may take the form of: (i) raising awareness of readily available internationally accepted commercial law standards, and tools and expertise designed to facilitate understanding, enactment and implementation of

those standards; (ii) circulating texts of the relevant standards; (iii) organizing briefings or training; (iv) supporting efforts to centralize local expertise on commercial law issues, for example through the establishment of a national centre of commercial law expertise or national research centre and national databases on commercial law issues; and (v) facilitating responsible and continuous representation of local experts in international and regional commercial law standard-setting activities;

(b) Building capacity of local judges, arbitrators and other legal practitioners to better understand internationally accepted commercial law standards, apply them in a uniform way and achieve a better quality of judgments and awards. Means of assistance may include: (i) raising awareness of readily available international tools designed to facilitate understanding and uniform interpretation and application of internationally accepted commercial law standards; (ii) supporting the establishment of a mechanism for collecting, analysing and monitoring national case law related to internationally accepted commercial law standards[9] and collecting relevant statistics, e.g. on the speed of adjudication and enforcement; (iii) supporting continuous learning courses for judges and inclusion in the curricula of such courses of the relevant readily available international tools referred to above; (iv) organizing local judicial training with the participation of experts; and (v) raising awareness about international judicial colloquiums and facilitating participation of local judges therein;

(c) The establishment and functioning of arbitration and conciliation centres. Means of assistance may include: (i) attracting readily available expertise for the establishment of, and support to, such centres; (ii) facilitating access to the ADR and ODR mechanisms in those centres, for example by raising public awareness about them; (iii) organizing training for separate groups of ADR practitioners with the involvement of relevant experts to assist these mechanisms to become more responsive to the rights and needs of intended end users (e.g. arbitrators on uniform application and interpretation of international commercial standards; mediators and conciliators on conflict resolution skills; and ODR providers on issues specific to e-environment); and (iv) addressing through court reforms and other measures the role of the judiciary in providing appropriate support to ADR and ODR mechanisms.

3. Private sector, academia and general public

26. States may request assistance with:

(a) Raising public awareness, in particular among micro-, small and medium-sized enterprises and individual entrepreneurs, about internationally accepted commercial law standards, the readily available tools designed to facilitate their understanding and use, and commercial opportunities linked thereto (e.g. e-commerce, cross-border trade, access to domestic and foreign public procurement markets, access to credit, viable options for recovery in case of financial difficulties). Assistance in such cases may take the form of: (i) translation

[9] In this regard, please consult in particular the UNCITRAL CLOUT system that relies on a network of national correspondents designated by those States that are parties to a Convention, or have enacted legislation based on a Model Law, emanated from the work of UNCITRAL, or the New York Convention www.uncitral.org/uncitral/en/case_law/national_correspondents.html.

of those standards into local languages; (ii) creation of readily available local databases of those standards with links to their international source and supporting tools; and (iii) dissemination of information about those standards by other means;

(b) Supporting community-based institutions that contribute to economic activity, empowerment of the poor, private sector development, access to justice, legal education and skills-building, such as chambers of commerce, bar associations, arbitration and conciliation centres, legal information centres and legal aid clinics;

(c) Maintaining regular dialogue with non-governmental organizations that represent various segments of society (e.g. consumers, local communities, end users of public services, individual entrepreneurs, micro-, small and medium-sized enterprises and academia) as regards their views on measures required to improve the commercial law framework in the State;

(d) Assisting members of academia with developing local legal doctrine on commercial law issues in line with internationally prevailing ones, in particular by facilitating establishment of, or participation in, existing regional and international exchange platforms, including electronic ones;

(e) Educating people on international commercial law issues and increasing their awareness of basic rights and obligations arising from commercial relations as directly relevant to entrepreneurship (e.g. start-up and management of business) and employment opportunities. Means of achieving that include assistance with: (i) including international commercial law subjects in curricula of schools, vocational and technical training courses and universities; (ii) organizing moot competitions and sponsoring participation of local student teams in relevant international moot competitions;[10] and (iii) raising awareness about international courses on international commercial law matters[11] and facilitating participation of interested individuals therein; and

(f) Building capacity of various actors in informal justice systems and ADR (e.g. village elders) to use mediation and conciliation skills in accordance with internationally accepted standards and to better understand international commercial law standards, apply them in a uniform way and achieve a better quality of decisions.

The UNCITRAL secretariat[12] is interested in learning about experience with the implementation of this Guidance Note. It can be contacted on all issues addressed in this Guidance Note, including as regards provision of assistance with the identification of local needs for commercial law reforms, implementation of commercial law reforms and training on commercial law issues in countries in which the United Nations operates and across the United Nations system.

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[10] See e.g. www.cisg.law.pace.edu/vis.html.

[11] See e.g. www.itcilo.org/en/training-offer/turin-school-of-development-1.

[12] Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (e-mail: uncitral@uncitral.org, fax: (43-1-26060-5813)).

Annex III

List of documents before the Commission at its forty-ninth session

Symbol	*Title or description*
A/CN.9/859	Provisional agenda, annotations thereto and scheduling of meetings of the forty-ninth session
A/CN.9/860	Report of Working Group I (MSMEs) on the work of its twenty-fifth session
A/CN.9/861	Report of Working Group II (Arbitration and Conciliation) on the work of its sixty-third session
A/CN.9/862	Report of Working Group III (Online Dispute Resolution) on the work of its thirty-second session
A/CN.9/863	Report of Working Group IV (Electronic Commerce) on the work of its fifty-second session
A/CN.9/864	Report of Working Group V (Insolvency Law) on the work of its forty-eighth session
A/CN.9/865	Report of Working Group VI (Security Interests) on the work of its twenty-eighth session
A/CN.9/866	Report of Working Group I (MSMEs) on the work of its twenty-sixth session
A/CN.9/867	Report of Working Group II (Arbitration and Conciliation) on the work of its sixty-fourth session
A/CN.9/868	Report of Working Group III (Online Dispute Resolution) on the work of its thirty-third session
A/CN.9/869	Report of Working Group IV (Electronic Commerce) on the work of is fifty-third session
A/CN.9/870	Report of Working Group V (Insolvency Law) on the work of its forty-ninth session
A/CN.9/871	Report of Working Group VI (Security Interests) on the work of its twenty-ninth session
A/CN.9/872	Technical cooperation and assistance
A/CN.9/873	Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts
A/CN.9/874	Bibliography of recent writings related to the work of UNCITRAL
A/CN.9/875	Coordination activities
A/CN.9/876	Status of conventions and model laws
A/CN.9/877	UNCITRAL regional presence — Activities of the UNCITRAL Regional Centre for Asia and the Pacific
A/CN.9/878	Work programme of the Commission
A/CN.9/879	Settlement of commercial disputes: Revision of the UNCITRAL Notes on Organizing Arbitral Proceedings
A/CN.9/880	Settlement of commercial disputes: Possible future work on ethics in international arbitration
A/CN.9/881	Concurrent proceedings in international arbitration
A/CN.9/882 and Add.1	Technical assistance to law reform — Compilation of comments by States on a draft guidance note on strengthening United Nations support to States to implement sound commercial law reforms

Symbol	*Title or description*
A/CN.9/882/Add.1/Corr.1	Technical assistance to law reform — Compilation of comments by States on a draft guidance note on strengthening United Nations support to States to implement sound commercial law reforms — Corrigendum
A/CN.9/883	Technical assistance to law reform — Draft guidance note on strengthening United Nations support to States, upon their request, to implement sound commercial law reforms
A/CN.9/884 and Adds.1-4	Draft Model Law on Secured Transactions
A/CN.9/885 and Adds.1-4	Draft Guide to Enactment of the draft Model Law on Secured Transactions
A/CN.9/886	Draft Model Law on Secured Transactions — Compilation of comments
A/CN.9/887 and Add.1	Draft Model Law on Secured Transactions — Compilation of comments
A/CN.9/888	Online dispute resolution for cross-border electronic commerce transactions — Technical Notes on Online Dispute Resolution
A/CN.9/889	Possible future work in procurement and infrastructure development
A/CN.9/890	Settlement of commercial disputes: presentation of a research paper on the Mauritius Convention on Transparency in Treaty-based Investor-State Arbitration as a possible model for further reforms of investor-State dispute settlement
A/CN.9/891	Legal Issues Related to Identity Management and Trust Services
A/CN.9/892	Joint proposal on cooperation in the area of international commercial contract law (with a focus on sales)
A/CN.9/893	Settlement of commercial disputes: Proposal received from the Swiss Arbitration Association